of the Emperor Anthemius, or a little before Anastasius;—leges Theodosianaeus calcans
Theodoricanaeque proposant, utere culpas, novae tributa perquiri it—Concerning the Theodosian Laws, and proposing the Theodorici-
an, e) raking up old Offences, and exacting new (a) Tributes; for the Laws before the
said Anastasius or Alaric’s Time, were thus remarkably distinguished; Consult also as to
this matter concerning the Theodorian Laws, and the Reason of their being called
so, Cujacius in his Epistle to Eurarius
Rouconetus, Baronius, and Innocentius Cy-
ronius. § And it is likewise to be observed,
that Ataulphus the Goth, || long before this
Alaric, or about the Year four hundred
and twelve, had resolved, so to have
changed whatever was Roman into the
Gothic Name and Customs, as totally
to have obliterated the Roman Name.
But he afterwards for very weighty Rea-
fons, being unable to bring about a tho-
rough

(e) Theodorian. These Laws were called Territorian, by
way of Allusion, or Paramydia, in Opposition to the
Theodosian; that as the Romans valued themselves on the
Theodosian, so the Goths having their own Laws, though
different in Sense, yet the same in Sound, would have
them called Theodorian; and the true Name of Alaric,
who caused this Body of Laws to be compiled, having
been Theodorian, the Paramydia was left insipid. Ogi.

(a) Tributes. These are the Complaints the Provin-
cials made against Scouras; and his Villainy did not go
long unpunished, he being dragged along the Streets of
rough Change of the aforesaid Laws, laid aside this Design, and aimed at being considered as the Author of the Restitution of the Roman Laws. Now that Body, which may be called either the Alarician or Theodosian Code, though more properly by the Name of the former, was published in the Year of Christ 506; and it cannot be doubted, but that the Laws contained in that Body, and in the other Writings just mentioned, were in that Age for the most Part retained by the Franks. For Agathias* (who lived in the Reign of Justinian) speaking not only of his own, but of former Times, and relating the Customs of the Franks, says, ἐπὶ τοῦτον καὶ τα τοιαύτα Χριστιανοὶ Ρωμαίων ἐνεκέντρον, ἔννοια τῆς ἡγοί ὑπ' ἄλλα ἑκάστος ἀμφι ἐπὶ τα σύμβουλα γνώμη ἐσ' τῷ Θεῷ ἐργατέαν εὐμελίας — And they, for the most Part, make Use of the Roman Polity and Laws, and observe also the same method in their Contracts, Marriages, and Divine Worship; which as well as what we have before mentioned, relating to Times, subsequent to the Reign of Theodosius the younger, must be understood of the Theodosian Code, and of the other Anianean or Alarician Books. Thus stood Matters with regard to the Imperial Law in the West, down to the Reign of Justinian, after the great Declension of the Roman Empire there.
S E C T. V.

The constant Use of the Justinian Law as such in the East. — No Use for many Ages after his Time made of it in the West, in Matters of publick Government. — The Theodosian Body with its Adjuncts was under the Name of Roman or Imperial, variously received, as well before as after the Reign of Justinian, down to the Middle of the twelfth Century, or thereabouts, in the Management of the publick Affairs of some western Nations.

BUT Justinian, about ninety Years after the first Publication of the Theodosian Code, or twenty four Years from the Alarician Interpretation, or the Year of Christ, 530, began to publish (a) in the East

(a) The Body of the Civil Law is composed of the Code, Digest, Institute, and Novellae.

The first Code which was published by Justinian, came out on the VII Id. April, 529; but the Emperor being sensible there were many Defects in it, and that since the Publication thereof, he had been obliged to make
make several Ordinances: He on the 16 Kal Decem, 534, published another Code, calling it Codex repetitae praedationis, i.e. the Code revised and augmented; and suppressed the other Code, which is not now extant.

The C's comprises the Laws of fifty-four Emperors from Justinian to Justinus, it is divided into twelve Books, every Book into several Titles, each Title into Laws, and each Law contains several Parts.

The D's were next in Order of Composition, though not of Publication. They came out the 16 Decem. 534, and are divided into fifty Books, and the Books into Titles, &c. much in the same manner as the Code; they are called Digests, because the Opinions of the ancient Civilians, which lay dispersed in two thousand Volumes were digested into Order, and disposed of as much as was possible under each Title, according to the Method and Series of the perpetual Edict; they got the Greek Name, Pandects, as comprizing all the ancient Jurisprudence.

Whilst the Digest was composing, the Emperor laid his Commands upon Tribonian, Theophilos, and Donianus, to make an Abridgment of the first Principles of the Law, which was published the 21 Nov. 535, near a Month before the Digest, under the Title of Institutes. The Institutes are divided into four Books, each Book into several Titles, and every Title into several Parts.

The Novels or Authentics make the fourth and last Part of the Civil Law; they are called Novels as being new Constitutions, mostly of Justinian, promulgated at several Times, and upon different Occasions, after the Publication of Justinian's second Code. Authentics, from their being authentically translated from the Greek into the Latin Tongue, and they were not collected and joined together in one Volume till after the decease of Justinian.


(4) About the eighty second Year of his Age.
Sec. 5. annexed to Fleta.

of the Theodosian, Gregorian, Hermogenian, or of the other Codes of the Law; nor the Prærogative antiently allowed to Papinian, any longer subsist in the East. Many other Matters were altered, re-established, abrogated, introduced; Justinian gave a new Turn to Affairs, military and forensic, changing some Laws, and bringing in others, as *Procopius writes, ὁς ἡ ἑπότωμα ἐπάνω ἢ -- i. e. that all Things might be looked upon as new, and called after his Name. Concerning which Matter, see also more very well Notice to this Purpose, as well in his secret History, as in the Notes of Nicholaus Alemanus: That Body then very different from the antient or Theodosian Code, was made Use of, both in the eastern Parts of the Empire, and in the Exarchate of Ravenna, till this last was, in the Year of Christ 752, by King Ausulfus abolished;† and again indeed in the East, down to the Time that Constantinople was, about the Year of Christ 1453, taken by the Turks; at which Time it is said, § that the Patriarch Maximus did, by Order of Mahomet, who took that Imperial City, among other Books, translate into Arabic -- τὰς ἱερὰς καθηκον ἱερὰς μᾶς -- the Imperial Codes (by which must be meant, either the Imperial or Justinian Body of Laws, or the sixty Books of the Basilics compiled, it is not improbable, from it) for the future Use of the Mahometan Empire. And it is evident, both
both from the Basilics themselves, and from the Synopsis, which Harmenopulus, Attaliatas, Nomocans of Photium, Balsamon, Zonaras, Psellus made of them, as well as from several other Greek Authors, easily to be met with, both on the Imperial Law, and on the Pontifical, intermixed with it; that there was in the East an uninterrupted Use of the antient Imperial Law. But in the West, the Roman Empire, considered as such, in a manner dwindled away into nothing, upwards of fifty Years before the Reign of Justinian, as Procopius (a, also, and Agathias, co-temporary with Justinian, where they treat of his Reign, sufficiently evince. And what Corippus Africanus says, where he now and then stiles Justin the younger, Justinian's Successor, Lord of the World, and of the Universe, must be looked upon only as a gross Piece of Flattery; many more such Titles in that Age are extremely ridiculous, unless they are intended to assert the antient Rights of the Emperors, and not thereby to represent in any Sort, the then Power and Right of governing in the West: for it is manifest from all History, that such Power which long before had been reduced within the narrowest Limits, at last, after a Century of

(a) Procopius. He was Secretary to the famous General Belisarius in all his Wars, and was afterwards made Senator and Prefect of Constantinople.
or two, or there abouts, entirely ceased; wherefore the Imperial Law, after the a-
foresaid Irruptions of the Barbarians, be-
fore the Reign of Justinian, as well as in
the Ages subsequent to him, must be con-
fidered in a two-fold Light; either as it was
made Use of in the public Government, or
as read or neglected by the learned in the
Schools, or as apply'd by Writers. And
in handling each of these Points, the Theo-
dosian Code, with what is annexed unto it,
or the Alarician Body of Law, that is the
Law, preceding the Justinian Code, or the
old Imperial Law; and the Justinian
Body, or the later Imperial Law; are to
be considered a part. The more ancient
Roman Law, in force before the Reign of
Justinian, bore Sway before the Emperor's
Time, and for many Years after in the pub-
lic Government of the Ostrogoths in Italy,
and of the Visigoths in Spain and Gaul, and
some other neighbouring Nations, though it
was considerably clogged with the Theodo-
rician, Avianian or Alarician, and such o-
ther like new Edicts, and superinduced In-
terpretations; neither was it then any other
ways admitted, than as it received Sanction
from the new Authority of the Princes, who
allowed of it. What we have thus related,
no Ways concerns the Justinian Body, or
any Part of it; but relates only to the Theo-
dosian Code above-mentioned, and to
the other Laws annexed unto it, which were
publickly made Use of. And that Greek
Epigram
Epigram, prefixed to the *Florentine Edition*, telling us, That the People of *Asia, Africa, Europe*, as much as to say, all Mankind, every Nation, paid Obedience to *Julii*n and his Digests, is a most gross Hyperbole, it being evident that the *Theodorian* and other Laws, as we have said, which had obtained the Name of Roman, prevailed in the West. Neither did the *Frances* admit of any other Roman Laws; it being of these, as we have before observed, that *Agathias* speaks, where he tells us, that they ὅι τα πολλά for the most part, conformed themselves to the Roman Polity and Laws; for he could not, on Account of the Mixture in their Customs, and *Iustinian*'s having, as we have above taken Notice of, therein introduced very remarkable Alterations, mean this in an absolute Sense. Nor was the Roman Law, which Pope *Leo* the fourth, about the Year of our Lord 850, in his Epistle to the Emperor *Lotharius* the first, informs us flourished at that Time at *Rome*, and through Italy—\[Absque universis procellis\]—without any Opposition, any other than the *Theodorian*: Consult concerning this Matter, *Gratian* and *Ivo*, and we meet, both in the antient Formularies of *Marculphus*, and in some others, as well as in the miscellaneous Works of *Cassiodorus*, who wrote before their Time, with frequent Footsteps of this Law. Neither was the Law indeed at that Time with...
with greater Propriety called Roman, than those provincial Tongues, the Spanish and French, which by Corruption sprang from the antient Roman Language, were usually called Roman and Romance. These Tongues did not deviate more from the Latin, than the above Laws, however then called Roman, as admitted into, and adapted to Practice, differed from the original Sense of the aforesaid Theodosian Body. That antient Law moreover, was, even in the Empire itself, translated as it was into the West, so enlarged and altered by new Circumstances of the Caroline Race, that it visibly put on another Face, and that too, as is evident, exceedingly different from the old Body of Laws. The same may be likewise said of the Use of the aforesaid antient Roman Law throughout Spain and Gaul, which no one, acquainted with the Laws of the Longobards, Visigoths, and with those of other Nations, collected together in the Code of antient Laws, can be a Stranger to. King Cindafswinthus, about the Year of Christ 650, prohibited by a most express Edict, * the Use of the Roman Law, even among the Visigoths. And that old Roman Law was in the Ages between the End of the Roman Empire in Britain, or about the middle of the fifth Century, in the Year of our Lord 450, and the middle of the twelfth Century, or there abouts, that is, in the Year of Christ 1150, in a very
very different manner retained and made Use of in the Government of some Parts of the West, when the Justinian Body, which had been as it were for a long Time buried in Oblivion, revived again, as shall be presently shewn, in the West. That most learned Work lately published by † M. Anton. Dominicus, I. C. relating to the Prerogative of Alodial Lands, in the Provinces of Narbon and Aquitain, and Innocentius Cironii's Observations on the Canon Law, wherein he mentions a Treatise of Joannes Coita, Professor of Thouisfe, of the Origin of the Law in France, which was then soon to appear upon this Subject, are preferably to all other Writings, as far as the Galls are therein concerned, to be consulted. And here it is first to be observed, that when Isidorus (a) Hispalensis ‡ proposed making an exact Treatise of the Laws, and to enumerate their respective Authors, he makes mention of the Gregorian, Hermogenian, and lastly of the Theocratic Code, but takes no Notice of the Justinian, on Account of its not being then used in the West. That Author flourished about the Year of Christ 639, or about seventy Years after Justinian. Every one moreover had Liberty, even in the Roman Empire, to declare by what Law he would be governed, whether by the Roman (which must always be

(a) Isidorus Hispalensis. He was A. B. of Seville.
be understood of the Theodician Body of Law, together with the other Laws annexed unto it; it being compleated at the Time when the Emperors, who gave Sanction unto it, governed in the West, which cannot at all be said of the Justinian Body, inasmuch as it received its Power from him) or the Gothic or Longobardic, or any other then in Force. And this we are well assured of from the Law * of the Emperor Letharius the first, relating to that Matter; which Law I am nevertheless of Opinion ought thus to be understood, that the aforesaid Liberty of conforming to the Rule of this or that Law, was only indulged to Princes or Heads of whole Cities, Villages, Territories, and to a Number of Inhabitants forming themselves into a civil Community, who had freely made such a Declaration, but not to single Persons in a distributive Sense; for it seems no way reasonable to understand that Place of such. An Instance of the Effect of such a Declaration of this Kind may be seen in Carolus de Tocco, † of a Roman and a Lombard, impleading each other in Court, thus distinguished by their respective Profession of different Laws—an illustrious Example likewise of this Kind of Protestation, occurs in the Professions made by Boniface, Duke of Tuscany, and the Countess Maud his Daughter, to wit, He declared for the Longobardic, the for the Salic Law; which Carolus Sigonius * remarks out of their Tables, several.


† Carolus de Tocco. Claus. in Leg. Lulgob. l. 2. tit. 57.
veral whereof are preserved in the Church of Modena. But that she afterwards chose the Longobardie, is also concluded from the Charter of her Donation, by which in the Year of our Lord 1096, she founded the Abbey of Mount Saint Peter in the Diocese of Mentz, whence some * would prove Sigonius to have been mistaken, but I think without Grounds, she having made the one in her younger Years, the other when she was very old; and the Difference of the Places, with regard to this Matter, must also be considered: The (a) Pifteno# Edict likewise of Charles the bald King of the Francs, in which there is frequent Mention, suitable to the Intent of that Lotharian Law, of the Countries and Lands in which Judgments are determined according to the Roman Law, and of those who conformed to that Law, plainly makes to that Purpose. But the Roman Law, mentioned as well in those Capitularies, as in the antient Writings of the Emperors, Carolus and Ludovicus Pius, and elsewhere in other Authors of the same Kind in that Age, must always be understood of the Theodosian Body, and of the other Laws annexed unto it, not at all of the Justinian Moreover some Things are expressly alleged * in the Capitularies of Carolus and Ludovicus, out of the

* Capitul. Carol. et Ludovic. i. 6. c. 281 et 307. &c.

† Edict. Pifteno.
An Chr. 834. 13. 16. 20. 23. 25. 31.

(a) Pifteno, called so from Pithae, an antient Castle in the Diocese of Rouen. Donizet. p. 318.
Sec. 5. annexed to Fleeta.

the Theodosian Body, as Laws; and in the Additions of Ludovicus, relating to the Punishment of those who change the Nature of Copulation, where, Lex Romana omnium humanarum mater, the Roman Law is called The Mother of all Laws; this cannot be understood of any other, than of the Theodosian Body. As for Example, it is there said, That the Perpetrators of such a Crime are, according to that Law, to be burnt; whereas by the Justinian Law, to wit, that of Constantine and Constans, received into his Code, through not into the Theodosian, such are to die by the Sword. But the Rescript of the Emperors Theodosius, Valentinian, and Arcadius, to Oecumenius Vicar of the City of Rome, found in the Theodosian Code, prescribes Burning alive; which being erroneously printed, is thus to be corrected from the Manuscript—Unques quibus flagitii usque ad virili corpore multibriter constrictae, alieni Sexus damnare Patientium (nihil enim discretum videtur habere cum feminis) ligantes, fecxus spectantes populo, flammis vindicibus expiabant—Whence for the most Part, as Cicilians remark, the Custom of condemning to the Flames such flagitious Criminals, is to this Day retained among some remote Nations, in which that Roman Law was in those Ages made Use of. And as that Punishment was altered by the Justinian Law, that is by the Constantine Sanction, brought again by Justinian into Practice; so in-

† Addit. L. cavi. 4. c. 102.

§ C. jul. lib. 9. tit. 9. as legem Isi am. s. euct. cal. 31.

* C. Theod. lib. 9. tit. 7. sec. 16. ad legem Justin. et Adiutane i. 6.

† Damhadian. in iii. C. C. 19. l. 12. men. s. 7. l. 6. 5. 3. 9. s. Schol. 4. num.
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deed the whole Body of the Theodosian Code, as far as it had Authority, or was made Use of in Court, and as such, was in a Manner entirely abolished by the Justinian Law, (to wit, as much as that could be thereby effected) concerning the Confirmation of the new Code. But his Empire and Power was at that Time almost limited to the East. That Theodosian Body however was visibly now no longer, properly speaking, Imperial, or kept up by the Authority of the Emperors, but was by the above-mentioned Western Kings and Nations, according to their respective Pleasures, variously received. And the Justinian Body was then, as well as at present, in many Things very contrary to it.

S E C T
SECT. VI.

A Survey of the Use which Authors and the learned, during that Interval, made of the Theodosian Code, and what was annexed unto it. Likewise concerning that most famous Law of Constantinople, contained in that Code, or generally published with it; by Virtue of which a prodigious and monstrous Jurisdiction was formerly attributed to Bishops, or to the Hieratical Order, though in reality, that Law was never a Part of the aforesaid Code, at the End of which it is found; but the same, though long before abrogated, was added unto it by some Forgerers.

NOW concerning the Writers and learned during the Interval we are at present treating of, among whom those who have patched up the pontifical Law, partly out of the Decrees of Synods, partly from Collections, made up of Scraps picked up here and there, are, in my Opinion,
to be reckoned: it cannot at all be doubted, but that they made frequent use, as we have already mentioned, of the Th谁都n Code, it being of so much Weight in Matters of public Government. And it is evident to me, that a certain anonymous Author, in all Appearance a German, in that Part of his Epistle to Boniface, Archbishop of Mentz, about the Year of Christ 750, where he makes mention of the Study of the Roman Laws, speaks of this Code, but whether of any other I cannot say.—Neque enim parva temperum * intervallo in hoc studio protelanda sunt, ci duntexat qui sedert iugacitate legendi succentus legum Romanorum, iura modullitus rimabirur et cumula juris consultantum decreta ex intimis praeordiniis prudabitur.—Neither, says he, are the smalest Intervals of Time to be neglected in this Study by a Person, who in earnest thoroughly desirous of applying with unwearied Diligence a good Genius, will closely examine to the Bottom the Grounds of the Roman Laws, and minutely pry into all the Decrees of the Lawyers.—All which this anonymous Author, equally skilful in Poesy and Mathematics as the Law, meant of himself. But in this Place we judge it sufficient to animadvert only upon one of the most remarkable Instances of that Use in those Ages. Now there is met with in some of the Editions of the Thavaşian Code, to wit, in the Cujacian, and in those which copy after it, at the
End of the sixteenth Book, the Title \textit{de Judicio Episcopali}, concerning Episcopal Jurisdiction, which in some Books is said, \textit{de creaffe Corpopre Theodosiane}, not to be found in the Theodosian Body. There are three imperial Sanctions under that Title. The first is that most celebrated one, by which that immense and monstrous Power and Jurisdiction is, by Constantin the Great, in his Rescript to Ablatius the Praefectus Praetorio, granted to Bishops in the following Words.—\textit{Ut pro sanctis semper et venerabilibus babeatur quicquid Episcoporum fuerit Sententia terminatum}. — That whatever was determined by the Judgment of Bishops, should always be held as sacred and venerable; and that, in all Kind of Causes,—\textit{quae vel Praetorio vel civili Jure tractantur}—whether they were handled according to the Praetorial or Civil Law.—And that very same Sanction is admitted into the Capitularies of the Emperors Carolus and Ludovicus, collected \footnote{Collet, Capitul. & Carol. et Ludovic. ab. An. 821.} by the Abbot (a) Ansigifius, as from the 12th Chapter of the XVI Book of the Emperor Theodosius, according to the Lindegrogian Edition, as—\textit{Lex consilis perpetua tenenda} —— a Law to be for ever observed by all. But it ought now to be remarked, that the sixteenth Book has eleven Titles, then called Chapters; wherefore this, \textit{de judicio Episcopali}—concerning

(a) \textit{Ansigifius}. He was Abbot of Lutetia, and dyed in 834. Dupin’s Ecc. Hist.
ing Episcopal Jurisdiction—is to be looked upon as the twelfth of the last Title. And it is indeed cited in the Pythean (b) Edition, as well as by Gratian, § 37. out of the Capitularies, from the eleventh Chapter or Title of the sixteenth Book: and thus in reality it is to be reckoned as a Part of the eleventh Title, or that: de Religione—concerning Religion. Now these three Sanctions under the Title—de Episcopis, Ecclesias et Clericiis—concerning Bishops, Churches and Clerks, which is the second of the sixteenth Book, do not in my Manuscript immediately follow each other, but are variously intertorted.

There is added indeed that Sanction concerning the Jurisdiction of Bishops, decreed by the third Council of Valens, || held in the Year of Christ 355, in the Reign of the Emperor Lotharius the first, and Charles the Bald, in the Name it is true of Constantine, and though not expressly as from the Theodosian Code, yet by some antient Copies of it, it is plain, from what Jocobus (c) Sirmundus has set forth in the Preface of his Appendix to the Theodosian Code, that it was, together with some others, as it were, an Appendix to it. And both Ivo (d) and

(b) Pythean—called so from Peter Piltze, a learned Priestman.

(c) Sirmundus, a Jesuit and Confessor of Lewis the 13th of France. He was a Person of great Learning, and dyed in 1631, being 53 Years of Age,
and Gratian,* as well as Anselmus (d) Lucensis * Gratian, Caes.
took, as is observed in the Notes of the 55.
Gregorian Edition on Gratian’s Decretum,
this Constantinian Sanction from thence.
And it is evident indeed, whether they
transcribed it out of the Caroline Capitular-
ies, or from the very Code of Theodosius, or
out of its Appendix, that they looked upon
it, as Theodosian, and Part of the Theodosian
Law; for it was never admitted into the
Justinean Body. Baronius † places this
Sanction in the Year 314, or in the ninth
of Constantine, and he thinks that Euse-
bius, § and Zosomen,‖ have pretty truly and
briefly given us the Sense of that Sanction.
And the Use of this Code was doubtless,
on Account of this Sanction’s being con-
tained in it, extremely agreeable, and high-
ly acceptable to the Hieratical Order; for
by thus attributing such an immense Power
to the Bishops, it thereby, beyond all Dis-
pute, became very pleasing to them. And
it may hence be justly gathered, that the
Use of the Copies of that Code, whether
genuine or corrupted, was not uncommon
among the learned and Writers, during that
Interval. But concerning the Sanction it-
sel£ mentioned here, (which we crave Leave
by the by to make some Remarks on) I am
satisfied, that it was never at all in reality
inserted by Theodosius in his Code; for it is

(d) Anselmus Lucensis. Of Luca in Tuscany. He flourished
about the Year 1143.
manifest that it was long before the beginning of his Reign abrogated by Valens Gracian, and Valentinian, in the Year of our Lord 376, the aforesaid Emperors allowing Bishops Power only in such Matters as—ad $: Religionis observantiae pertinebant—related to the Obedience of Religion. The same is also confirmed by Honorius and Arcadius, who wisely prescribing Bounds to the Episcopal Power, decreed that—$ quaec	ies de Religione agerentur ut Episcopi agerrrent, ceteras vero Causas quae ad ordinaries cognitores vel ad usum publici juris pertinente, legibus operantes audiri—as often as any Question arose concerning Religion, Bishops should be sole Judges, but that all other Causes which belong to the ordinary Magistrates, or relate to the Practice of the established Law, ought to be determined by those Laws—and these Matters are contained in the Theodosian Body of Laws, as well as fully explained by the Emperor Valentinian $ the third. At that Time neither the Bishops, nor their Consistories, could without the Consent of the contending lay Parties, take Cognizance of their Causes. Quoniam conflat Episcopos et Presbyteros forum legibus non habere nec de aliis Causis secundum Arcadii et Honorii Dividiae constituta, quae Theodosianum Corpus offendit, propter Religionem posse cognoscere. Because, says that Emperor, it is evident, that Bishops and Priests have no Court to determine the Laws in, neither can they, according
cording to the Imperial Constitutions of Arcadius and Honorius, as is mani
fest from the Theodosian Body, judge of any other Matters, than those relating to Religion. Thus the aforesaid Emperor Valentinian. Neither indeed do I think that the above Sanction, as an extravagant, obtained a Place at the End of the Theodosian Code, or was, under the Title de Episcopis, by any other Means foisted into my Manuscript, than by the Frauds and Deceits, constantly, under various Pretences, made Use of by the Hieratical Order, who endeavoured to strip, right or wrong, according to the Custom of those Ages, not to mention others, sovereign Princes and Republics of their Authority and legal Power; by this Means, under the Cleak of Religion, its constant Pretext, most frenouously serv- ing their own Ends and Ambition. For in the Theodosian Code, it could have no Place, unless you allow, what is no Way probable, that the Compilers of that Code, in a Matter of such high Importance, too carelessly fluffed it with Sanctions, evidently opposite to one another. And the Justinian Law, into which this Sanction was never at all received, is not only every Way against it, but is manifestly abrogated by it. Nevertheless, even after the Justinian Body of Laws had been received throughout the West, chiefly, as we shall presently shew, by the Hieratical Order, that very same Sanction was set forth, both as a Theodosian and
and Caroline one, and as if it had been then in Force, as may be seen in the Epistolary Constitutions of Innocent § the third, about the Year 1200, to the Bishops of France, the Name of Constantine also being at the same Time counterfeited. They who ob- truded this Sanction upon the Emperors Car- rolus and Lodovicus, as Part of the Theodosian Code, imposed upon them, and the Gloss on Gratian || is right, in bidding us—Nota quod hee Lex est tota abrogata nec habet locum bodie—Remark that this Law is wholly abrogated, and is at this Time of no Force. And although in an antient Manuscript of mine, wrote about the Year 1120, it was a Part of the Title, de Episopis, or of the second Title in the sixteenth Book of the Theodosian Code: and, as we have before said, together with the two others already mentioned, inserted in it: yet it cannot well be doubted, but that this was brought about by Fraud, in Favour of the Bishops, with a View of procuring to that Sanction, long before abrogated, and hitherto extravagant, a greater Authority; the same San- cion being to be found in the more antient Codes, made Use of under Charles the Great, or about the Year 800, or 300 Years at least before the Date of my Manu- script, at the End of the Theodosian Code, by Way of Appendix. Yet it was, as well at that Time, as afterwards, frequently new moulded by some Impostors, with an Intent, it might be either taken as Part of the Eleventh Title, (in which, by the by, its
its Abrogation by Honorius, as we have observed, is plainly contained) or that a new, or another Title, as this de Episcopali Jus- dicio, should begin from it. And this and the other Sanctions joined unto it, are in the printed Editions, properly called Extravagants. And it is evident from the Capitularies before cited, that whatever Place it obtained, it must have been at the End of the Body of the Theodosian Law; but indeed it appears to me to have been a most manifest Fraud: and it is no Novelty to find spurious Laws inserted in, and tacked to the Bodies of genuine ones: but we shall, God willing, treat elsewhere largely of this Sanction. To what we have hither- to said, concerning the Use of the Theodosian Code, considered as the Roman Law, during the Interval we are now upon, as well as after the Commencement of the Empire of Charles the Great, may be added, what often occurs, relating to that Point, in Hinemarcs, (e) Archbifhop of Rheims, who flourished about the Year 860. He in his Epistle about preventing Rapes, produces in evidence—publicas Romanorum Læges — the public Laws of the Romans — quibus—by which, says he—* orbem uni- versum vivere fuit sua Dominione constitu- erunt—they decreed that the whole World should be governed—and quotes the very Laws contained in the Theodosian Code, and those too, never received into the Julianine

(e) Hinemarcs, A. B. of Rheims. He vindicated the Rights of the Gallican Church against the Pope.
tinian Body—§ Hincmarus likewise, in the same Epistle, makes mention of the Gregorian Code. || He cites † other Places out of the Theodosian Body, as out of the then most received Promissary of the Roman Law, often also adding the very Arianian Interpretation, annexed to the Theodosian Code. This Bishop gives us in his Epistle to Charles the Bald in Favour (a) of Hincmarus (b) Laudunensis, or of the Causes of Bishops, not long since, for the first Time, * published by Sirmondus, a most remarkable Specimen of this Matter. It is likewise very plain, as well from the Decretum † and Pannomia of Ivo (c) Carnotensis, or if you will Pannomia, and sometimes Parnomia, as it is called in a very antient and fair Manuscript in the Royal Library at St. James's (said by some † Lawyers to have furnisshed a Body of Canons before Gratian; others supposing Hugo (d) Cathalaunensis to be the Author) where the Theodosian Code is several Times applied as being then in Force; as from Gratian, § and other more antient Authors, from whom he made his Compilation

(a) Favour. Others say he wrote against him. Ay!, Hist. Intro. to Parergon. p. 5.
(b) Hincmar Laudunensis. He was Bishop of Lion in France, and Nephew to Hincmar, A. B. of Rheims, and took the Popes Part against his Uncle.
(c) Ivo Carnotensis. He was Bishop of Chartres in France, and collected the Decretum, and Pannomia. See Chap. 6. S. 1.
(d) Cathalaunensis — Chatou in France; and some ascribe the Pannomia to him.
tion, in which are produced out of the Theodosian Code, many Things even under the Names of the antient Pontiffs and others, as is taken Notice of at the End of the same Code in the Geneva || and Paris † Editions, as well as in the Prolegomena of that excellent Person David * Blondell, prefixed to Pseudo Isidorus; how extremely Useful and important that Code was in the Studies of the curious and learned, during that Interval, when any Question arose relating to Matters of the Law. But it is past Doubt, that the Roman or Theodosian Law, by Means of the very different Customs and Laws of other Nations, which had for an Age before prevailed, began, at the End of the Interval we have been speaking of, or in the eleventh Century, to disappear, and to be openly neglected by Persons even most studious in the Law. For it is to be observed, that Burkhardus, Archbishop of Worms, who flourished about the Year 1030, and compiled a Body of the Canon Law, not only did not insert into that Body, any Thing out of the Theodosian Code, considered as such; but also that in the Lege Familiae S. Petri, † composed by him, concerning the Right of Dowries, Inheritances, Contracts, public Decrees, and other forensic Mat-

(|) Blondell. A French Protestant of great Learning, who dyed in 1655.—He has fully proved Huet's Collection of the Decretal Epistles of the Popes of the three first Centuries to be all forged, and a shameless Impe-
Matters, he has not borrowed any Thing from thence, nor in that Work imitated any Thing contained in the same Code; for which Reason, it is scarce credible, that the Use of the Theodosian Code, was at that Time so common in the Western Parts of Christendom, as it had been in former Ages.

CHAPTER VI.

SECT. I.

Though the Clergy now and then made Use both of the Justinian and Theodosian Codes; the former Body of Laws, as such, was notwithstanding from the Reign of the Emperor Justinian, or about the Year of our Lord 560, till the Beginning of the twelfth Century, or the Year of Christ 1130, or thereabouts, of no Force in the West, in Matters of public Government.

It is, we are of Opinion, plain, that the modern Roman, or Justinian Body of Laws, considered as such, and as distinguished
guished from the antient Theodosian, for it is very different from this last, and often contrary to it, was no Way, except in the Exarchate of Ravenna, or in the other narrow Limits of the Eastern Empire in the West (and even these Remains entirely ceased about the Year of our Lord 750, to be a Part of that Empire) during the Interval from its first Appearance, or from the Reign of Justinian, or thereabouts, or near the Middle of the sixth Century, that is about the Year of our Lord 560 to the beginning of the 12th Century, or much about the Reign of the Emperor Lotharius the second, or for the Space of above five hundred and seventy Years, in Force in the public and civil Government of the West. § And little or nothing indeed is, during that Interval, by the Writers of the West, and that seldom, and but by few, quoted out of it. Isidorus above-cited, where he treats of the Authors of the Law, || mentions the Theodosian, Gregorian, and Hermogenian Codes, but takes no Notice of the Justinian, little or no Regard being then paid to it in the West. This Author flourished about one hundred and seventy Years after Justinian, some of whose Novells, as well as some Laws out of his Code, are a little before the Time of Isidorus, cited by Gregory the first. § It is plain also, that the Justinian Laws, or at least some of them, were, in the Ages succeed-
Writers of the Hieratical Order, and Ecclesiastics. Perhaps likewise both the *Jus浮ianum* and *Theodosian Laws*, are in that anonimus Letter above cited † out of the Epistles of Boniface Archbishop of Mentz, wrote about the Year 750, understood under the Name of *Romanorum Legum*. And Pope *John* the eighth, as we read in the *Decretum*, § of Ico Carnotensis, being about the Year 870, consulted by *Simebonius* Archbishop of Narbon, in the *Tri-caffinian* (a) Synod, concerning the Violation of the Privileges of the Church, or as they called it Sacrilege (for which no Penalty was, either in France or Spain, appointed in the Book of the Gothic Law; by which alone those Nations were at that Time to be judged) says—Norba Serenitas cum Praescriptis Episcopis, inspectis Legibus Romanis, ubi habeatur de Sacrilegii, iexenimus ibi a Justiniano Imperatore legem compositionis sacrilegii constitutam, scilicet in quinque libros auri optimi — Our Serenity and the Bishops appointed for that Purpose, having looked into the Roman Laws relating to Sacrileges, there find a Law constituted by the Emperor *Justinian* for the Punishment of that Crime, by a Mulct of five Pounds of pure Cold. That Law || of the Emperors *Arcadius* and *Honanrius*, is

(a) *Tricaffinian* — *Traya*, an Episcopal See in Champagne.
Sec. 1. annexed to Fleta.

is indeed found in the aforesaid Code; but at the same Time it is surprizing that they should not, unless they were not then provided with the Digest, take Notice of some Laws, much more severe, contained in the Justinian body, against sacrilegious Persons. But how this Law, when it was to be found in the Theodosian Code, \( \dagger \) which was then more generally received, as well as variously made Use of in Italy, France, Spain and Germany, should be at that Time in the West quoted out of the Justinian body, is still more difficult to account for. The very same, concerning Pope John the eighth, is likewise contained in Io. Pannormia, § except that 'tis in this Place read in the printed Editions—*in decem libros optimi Auri*—in ten Pounds of pure Gold — instead of quinque, five, which 'tis plain was the number in the Justinian Code. But both the Editions of the Pannormia, as well that of Sebastianus Brantius as of Melchior Vosmedianus, ought to be corrected, and quinque five, substituted in the Place of decem ten, as is further evident from a very antient and beautiful Copy of that Work in the Royal Library of St. James's. In the Council of Paris \( \dagger \) also, held in the Reign of the Emperor Ludovicus Pius, some Years before Pope John the eighth, or in the beginning of the ninth Century, there is produced that most famous and highly remarkable Novel of Justinian's concerning Excommunication, with this Addition, Quam
Quam probat et servat Ecclesia, which the church approves of and observes; about which Time, Hincmar, Archbishop of Rheims, expressing his Sense of that very Novel, says,—Proponam * tibi legalum Sententiam Justiniani Catholici Imperatoris quam probat et servat Ecclesia Catholicu, qua Constitutione † decrevit ut nemo Episcopus, nemo Presbyter excommunicet aliquem antequam causam probetur propter quam Ecclesiastici Canones hoc fieri jubes. —I will propoic to you an Edict of Justinian, that Catholic Emperor, approved of and observed by the Church, by which he has decreed, That no Bishop or Priest should excommunicate any Person, till the Fact for which the Ecclesiastical Canons injoin such Excommunication be first proved. The same Prelate produces also proofs, from some other § of the Novels of Justinian—quibus debita Observationis reverentiam Sancta Ecclesia exhibet—which as he tells us, the Holy Church observes with all due Reverence. Moreover 'tis recorded in the same Century, that Abbo, Father of Odo, Abbot of Cluny, could repeat the History of the Antients, and the Novels of Justinian by heart, which 'tis probable he effected by his extreme Application to the Study of the Law; for it is added—si quando lis quo quo modo inter Parentes suisset exercata tanta in cum Censura excererat veritatis ut undique omnes ad cum ob diffiniendi proficiscentur gratiam—that the World had such an extraordinary Opinion of his Decisions that every one, from all
all Parts, as often as any Contention arose among Relations, flocked to him, to decide their Cases. *John*, a Monk of Cluny † tells ‡ Jorn. Cluniaci. Monachi, in vita Odonis p. 15 in Bibliotheca Cumanensi.
The aforesaid *Ivo* Ca-notensis likewise, who flourished about the End of the same Interval, or in the 11th Century, speaks of *Justinian’s Novels* as of Laws—*quas* || *Catholicici Reges composuerunt et ex Authoritate Romana Ecclesiae populis servandis tradiderunt, et quas *commendat et ferunt Romana Ecclesiae*—enacted by Catholic Kings, the Observance whereof, they, by the Authority of the Roman Church enjoined to Catholic People, and that the Roman Church approved of, and observed them—and the same Author borrows many remarkable passages on the subject he treats of, from thence. *Tis plain also*, that the aforesaid *Ivo*, as well as some others, from whom * Gratian* compiled his work, cited, during this Interval, several Passages, not only from the Novels, but the other Parts of the *Justinian Body*, namely the Institutes, Digest, and Code of that Emperor. With respect to *Ivo*, this is manifest, not only from his *Decretum*, † but from his *Panormia* || and *Epistulae* § We frequently also meet with ‡ Laws in Gratian, taken according to his constant Custom, out of the *Justinian Body*.
And indeed the above Authors, as well as some others produce during the above Interval, Laws, as being then in Force, both out of the *Justinian* and *Theodosian body*, though they sometimes conceal the Name

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*† Ivo. Decret. pars. 16. tit. de Caufis laiciis, paf- sim.*
*‡ Ivo. Caufian Cauf. 2. qua. 6. c.*
*§ Ivo. Epift. 99 112. &c.*
*|| Ivo. Panorm. in pref. 52 c. 53.*
*‡ Laws in Gratian, taken according to his constant Custom, out of the *Justinian Body*.*
of the former Code. The Theodosian and Justinian Laws, though often opposite to each other, were, whenever they did not clash with the Cannons, in like manner equally made Use of by the Clergy; who by this means composed out of this twofold Body, and the Canonical or Pontifical Law, with a View, according to their usual Practice, both to deceive, puzzle, and cheat the Laiety, as occasion should offer, as well as to serve their own ends, that amazingly monstrous medley of Laws. But we no where find, that the Justinian Body of Laws, considered as such, was, during those Ages, made Use of in the civil or public Government,

S E C T. II.

The Revival under the Emperor of Lotharius the second, about the Year of our Lord 1130, of the Justinian Code in the West. Of Irnerius, called the first Illuminator, the Light of the Law, the first Author of Glosses, and who gave rise to the Azo's, Accursius's, and such other like Lawyers.

The Authority and Use of the Theodosian Code, at the latter End of this Interval, greatly declining in the West, where
where, as far as the Customs of each Nation, and their respective Laws would allow, the aforesaid Body had, as we have shewn, so long, though variously prevail'd; the thoroughly inquisitive made greater Use in their Studies of the more copious Justinian Body, as appears plain from Ivo Carnotensis, and Anselmus Luccensis; and from its being also cited in the Notes of the Gregorian Edition of Gratian. This Anselmus flourished about the Year 1080, and Ivo, who was his Cotemporary, as may be also seen in Sigebertus, Tritemius, and others, was from the Abbatian Dignity of St Quintin of Beauvais, which he enjoyed in the Year of our Lord 1078, translated in 1092, to the Bishoprick of Chartres. * Roger Wendenover, Matthew of Paris, and Matthew of Westminster, expressly place his Death in the Year 1117, though † others date it, or conjecture that it happened some Years before, but the precise Time of his Death is put out of all doubt, by Robert (a) de Tortinea, who has, in his Manuscript Chronicle or Continuation of Sigibertus, positively confirmed it. And the Justinian Law was in so great esteem, even under the Emperor Henry the fifth, or about the Year 1120, in Decisions made in the Ecclesiastical Court; that some Part of the Justinian Law was also at the Instigation of the Hieratical Order, admitted, even under the Name of that Prince, both into the Imperial

(a) See Note, c. 7. f. 4.
rional Edict, § about the Oath relating to Calumnly, as well as into the Decree of Hono-
rius * the second, concerning the same Matter. The Emperor Martianus's San-
fction also, erroneously in the printed Edi-
tions, called Marcus, is cited in that Edict
and Decree, as taken from the Justinian
Code, † it not being to be found among
the Novels of the Emperor Martian, an-
nexed to the Theodosian Code. And Per-
sons of Learning, considering the Pandects,
together with the other Parts of the Justin-
ian Body, as an invaluable Treasure of
the Law of Nature and nations; after-
wards, about the middle of the twelfth Cen-
tury, or a little before that time, much about
the Year of our Lord 1130, resorted to Bono-
nia, to make public Lectures on the Justinian
Body of Laws. Pepo, a Person no way re-
nowned, nor appointed by public Authority,
was the first of these, who began his Ex-
positions. Irnerius, called also Trinierius, and
Wernerius, the first Author of Glosses, Co-
temporary with Pepo, became, a little af-
terwards, the most considerable in this Me-
thod of Instruction. Odofredus § says, that
Dominus Irnerius fuit, apud nos Lucerna
Juris, id est primus qui docuit in Civitate
ipsa, nam primo cepit studium esse in civitate
ipsa in artibus, et cum Studium esset destruc-
tum, Romae, libri Legales fuerunt deportati,
ad Civitatem Ravennæ, et de Ravenna ad
Civitatem ipsis. Quidam Dominus Pepo
cepit autoritate sua legere in legibus. Tamen
qui-
quicquid fuerit de Scientia sua nullius nominis fuit. Sed Dominus Irnerius dum decret in artibus in cicitate ipsa cum fuerunt deportati libri legales, cepit per se studere in libris nostriis et studendo cepit docere in legibus. Ei ipse fuit maximi nominis, et fuit primus Illuminator Scientiae nostrae, et quia primus fuit qui fecit Glossas in libris nostriis vocamus eum, Lucernam juris.— Master Irnerius was, in our Parts, the Light of the Law, that is the principal Person, who publicly taught the Civil Law in that City, (to wit, Bononia,) for the Arts and Sciences began in that Age first to flourish there, and after learning had been banished from Rome, the Law-Libraries were removed to the City of Ravena, and from thence to Bononia. One Master Pepo, by his own Authority began Readings on the Laws; yet, whatever his Knowledge was in his Profession, he did not thereby gain any Reputation. But Master Irnerius, at the same Time that he taught other Sciences in Bononia, began, after the Books of the Law were brought thither, to apply himself in private to the Study of those Books, and opened, whilst he was studying them, his Lectures on the Laws, and was held in the highest repute, and was the first who gave Light to our Civil Law in Bononia; and we, from his having been the first who wrote Glosses on our Books, style him the Light of the Law—and it is || reported, that this fame Irnerius, who, as the above mentioned

I 4

tioned Odesredus † testifies, taught also other Sciences in Bononia, before he became Professor of the Laws, learnt the Civil Law at Constantinople, where the Study of it then flourished. And soon afterwards the Emperor Lotharius (a) the second was so highly pleased with this Academical Revival of the Law at Bononia, that, ex uno jure civili Romano postbac judicia fieri lege is

(a) Lotharius the Saxon Emperor of the West waging war, against Ruy Duke of Aquitain, or (as others call him) King of Swit, and imploiring the Aid of the Commonwealth of Pisa (then a Free State) first discovered and found out that part of the Civil Law which is contained in the Digests or Pandects, upon destroying the City of Amastris or Amasia, near Solerium, in Apatin, written in very antient Characters or Capital Letters connected and running into each other, without any interlence of words or distance observed between them. The people of Pisa, who afflicted the said Emperor in this War with their Fleet, in Honour of their gallant Achievements begged this Book of him, as a Reward of the Service done him by their Navy. And thus it was given to the City of Pisa, there to remain as a memorial of their good Service: whether all the Doctors referred, upon any Dispute about the Sense of the Law, in order to consult the same. But when the City of Pisa was reduced and taken in the Year 1496 by Captain General of the Florentine Army, after a long Siege, it was removed from thence, and carried to Florence, as a part of his Triumph, where it is now very carefully and religiously kept in the Great Duke of Florence's Library consisting of Two Volumes bound in Crimson Velvet, and adorned with silver Claps and Plates: and hence these Books are filled the Fio citin e Pandects, or the Pandects of Pisa. And this Book or Code of Laws was formerly in so great Esteem and Veneration, that whenever it was brought forth and expos'd to any Person's View, it was performed with the Solemnity of lighted torches, and with a certain Number of Monks standing round about it uncovered, in the presence of the Great Duke or Chief Magistrate. *Aylli Prelim. Discours Civ. Law, p. 38.*
is sanxerit—he enacted a law, that from that time Causes should be decided only according to the one Roman Body of the Civil Law (to wit the Justinian which now came in the Room of the antient Theodosian Body much after the same Manner as the Aristotelian Philosophy took Place of the Platonic) which Carolus (b) Sigonius * tells us—Constantem doctrarum hominum in monumentis esse famam—redundes to the immortal Fame of learned Men—and the same Author informs us—ante hoc tempus Italici certe alii Longobardica, alii Salica, alii Romana lege uetabantur. In posterum autem annes uni iuri, unique legi, religuis abrogatis, nempe Romanae obtemperarunt; jusque civile publicis Italicis in gymnisibus majore celebrari studio et diligentiori colo opera cessum—that some of the Italians, before that Time made Use of the Longobardic, others of the Salic, and some of the Roman Law (that is of the Theodosian) but that afterwards, all were content to be governed by one Body of Rights and Laws, to wit the Roman (or Justinian) the others being abrogated; and the Civil Law began at that Time, by the affiduous Application to the Study of it, to be more and more famous, and to be daily much more cul-

(b) Sigonius, born at Modena in Itak, he was Professor of the Greek Tongue in that City when he was but 22 Years of Age, he is the Author of may excellent Treatises, and dyed in 1585 being 60 years of age. Collier.
cultivated in the public Schools of Italy. Now it happened that the Pandects which the Civilians formerly called Pisanas — Pisian, and literam Pisamam † — the Pisan Text (from Lotharius's having removed them thither) just as they are now called Florentinas, Florentines — because they are preferred as an inestimable Treasure in the Library of Medicis at Florence, and which are more Valuable than any other Copy, both on Account of their Antiquity and Authority, were, about the Year 1137, or soon after the taking the City Amalphi, in the War carried on by the Emperor Lotharius against Roger the Norman, found among the Spoils of that City. And it is plain from the above Odofredus, that other Parts likewise of the Justinean Body of Law, were about the same Time dug up near Ravenna: and from thence forward, the Study of the Imperial Law began chiefly to flourish. Siganus also in another Place says, that Anno 1102, Irnerius Philosophus Bononiae docens, Matildis rogatu, Pandectas interpretari cepit et primus Glossas in cas scripfit. — Irnerius the Philosopher, Professor at Bononia, began in the Year of our Lord 1102, at the Desire of Matilda, his Interpretations on the Pandects, and was the first who wrote Glosses on them. — Thus the above Author in the Argument to his History of Bononia. And Conrad, Abbot of Ursberg (c) relates the

(c) Conrad Abbot of Ursberg. He lived in the 13th Century, and wrote a Chronicle beginning with Belus King of
the same of that most celebrated Countess Matilda, Daughter of Boniface, Duke of Tuscany, at the End of his Works. But as Irnerius † lived to the Year 1190, or thereabouts, it can scarce, on Account of his Years be credited, that he could discharge this Office at the Deseire of Matilda in the Year of Lord 1102, that Countes having died * in the Year 1115, or several Years, according to the general received Opinion, before Irnerius was Professor at Bononia, to wit, in the Reign of the Emperor Henry the 5th, and about ten Years before the Beginning of that of the Emperor Lotharius. Neither do I indeed believe that the Piece at the End of Ursbergensis, relating to Irnerius and Matilda, was wrote by that Author; but am rather inclined to think that it was, without grounds, annexed to his Work by some other Writer, Ursbergensis having before inserted in the Body of his Chronicle every thing proper, relating to the revival of the aforesaid Imperial Law under Lotharius. Nor can I account for its being added at the End, that Gratian wrote at that Time (which coincides with the Year of our Lord 1150, or with the Reign of the Emperor Frederic the first) and that then, — eisdem quoque temporibus Do-

† Iv. Ficardus in victis Jurisconsult.
Guidus Pauziric, de claris Leg.
Inter. l. 2. c. 13
&c.

* Sign. de regno
Ital. l. 10.
Dominus Wernerius libros legum qui dudum neglecti fuerant, nec Quiniam in eis studucrat, ad Petitionem Matildae Comitissae renovavit et secundum quod olim a divae Recordinationis Imperatore Justiniano compilati fuerant, paucis forte verbis alicubi interpositis, &c.—to wit, about the same Time also, Master Wernerius, at the Desire of Countess Matilda, brought into Repute the Books of the Law, which had, no one studying in them, been for a long time neglected, just as they had been formerly compiled by the Emperor Justinian, of blessed Memory, a few Words perhaps here and there only added, &c.—All which seems but badly connected with what is related by the above Chronographer; for Urspergensis flourished about the Year of our Lord 1230. But if you would be further informed concerning the Revival of the Justinian Law in the West, such as we have represented it, consult, besides the abovementioned Authors, Tiberius Decianus, † Franciscus Baldovinus, § Valentinus Forsterus, || Ioannes Fichardus, ‡ Guidus Panzirollus * the three last of which wrote the Lives of the Lawyers, even after the Justinian Law had been thus revived. Wolfgangus Freymonius, † Paulus Merula, || Innocentius Cyronius, § and others also quoted by them. About this Time we also meet with, in the public Tables of the Roman or German Empire, the Name ‡ of Justinian.
tinian, as of a preceding deceased Emperor, from whom the succeeding Emperors chiefly derived their succession. Whence also the Roman Senators addressed the abovementioned Emperor Lotharius on the same subject, in the following Verses,

Rex valeat, quicquid cupit obtineat, super
(Ho)bes
Imperium teneat, Rome sedeat, regat Or-
(bem.

Princeps Terrarum, ceu fecit Justinianus,
Caesaris accipiat Caesar, &c.

Pope Hadrian the fourth, * writing to the Bishops of Germany, speaks to the same Purpose, concerning the aforesaid Use of the Name of Justinian. And the Study of the Justinian Law, soon after extended itself to Montpelier in France, as well as to Spain, and other Nations, and that Emperor's Body of Laws was made Use of in Matters of public Government,
S E C T. III.

All the other Sciences, till then as it were buried, began about the same Time, to be revived in the Western Parts of Christendom.

Upon so remarkable a Revival of the Justinian Law, such as we have represented it, 'tis worth Notice to observe, that the Pontifical Law likewise, as well as the other Sciences, were in that age, and about the same Time, greatly restored throughout the Western Parts of Europe. For all the liberal Arts and Sciences had lain, except in the Schools of the (a) Arabian Africans, and in the Parts of Spain, contiguous to them, too long neglected and unknown, throughout the West. Even Logic itself, the means both of attaining to, and of regulating the other Sciences, was, as

(a) We must not think that the Arabs, tho' they were Mahometans, were ignorant and illiterate; for having subdued many Countries of the Roman Empire, and ravaged many Provinces of Asia, they, amongst the Spoils and Booty, they had made in Greece, by chance found some Books, and applied themselves with great Eagerness to the Study of Learning; and they were so keen, that about the Year 820, they made the Caliph Almanzor demand of the Emperor of Constantinople the best Greek Books, which when they had got, they caused them all to be translated into Arabic; and when Learning was at the lowest Ebb in Italy, the Arabs studied with the greatest application.

as an Art,—cujus Dogmata Sophismata essent, et quasi sacra lectioni contrariae—whose Precepts were looked upon but as mere Sophisms, and in some measure contrary to the Holy Scriptures, held in utter \( \text{Ex} \) ecration, and Theology was but too often al-
so, on that Account, handled by Persons, wholly unequal to the task. But now as Metaphysicks, Natural Philosophy, Ethics, Logic, Medecin, and the Mathematics, which like so many Stars, darkened by Clouds, had been for a long Time before eclipsed, began, as it were at once, by Means of the Arabic Versions and Interpre-
tations, such as they were, of some antient Greek Authors, to shine forth about the Middle of the 12th Century; so likewise, as we learn from the Decretum of Gratian, and the Sentences put forth by Pet-
ter Lombard, who lived at the Time of the aforefaid Restoration of Learning, the Pontifical Laws also, as well as Theology it-
self, were revived. And as to Theology, what follows concerning Robert Pullein an Oxonian deserves in this Place to be re-
marked. In the Year of our Lord 1133,

—Magister Robertus Pullein Scripturas divinas quae in Anglia obsoluerant opud Oxoniun legere capuit. Et postea cum ex Doc-
trina ejus Ecclesia tam Anglicana quam Gal-
licana plurimum profecisset a Papa Lucio se-
cundo vocatus et in Cancellarium sanitae Ro-
manae Ecclesiae promotus est,—Master Ro-
bert
Selden's Dissertation. Ch. 6.

* Mif. in Bibliothec. Cottonian. De c. v. d. plura in * * * * ex Batoni. Bur-rien.

do, apud Jo. Baskum Cente 2.

Scriptor So. 27.

Jo. Thal. in 28.

atque ex I Roi-

fo, apud Brian.

Tvinum in An-

tiq. Orosienfibus.

F. 168.

burt Pullein (thus Thomas Wikes,* (d) Canon of Osey) began Lectures at Oxford on the sacred Scriptures, which had been before diffused in England, And he was afterwards (the Gallican and English Churches having received great Benefit from his Instructions) sent for by Pope Lucius the second (about the Year 1145) and promoted to be Chancellor of the holy Roman Church. And thus indeed all the Sciences, having been as it were so long buried, began again, in some measure, almost at the same time to revive and flourish. This Revolution with Regard to Learning, which happened about the Reign of the Emperor Lotharius, was very much forwarded under the Emperors Conrad and Frederic the first.

(d) Thomas Wikes Canon of Osey. His History begins at the Conquest, and ends at the Death of Edw. 1st. 1304. Rapin.
S E C T. IV.

Under what Restrictions the Use of the Justinian Law, thus revived in the West, was allowed of in France, Spain, Lusitania, Italy, Germany, and elsewhere.

But as to what relates to the more antient Roman or Justinian Law, thus revived in the Empire, it is not to be understood in that sense, as if all the other precedent Laws in force, were so entirely and really abrogated (which last Word Sigonius makes Use of) that the Body of the Justinian Laws alone had so far taken place, that no other was afterwards of any force, or that as the Law of the 12 Tables formerly brought from Athens to Rome, it derived its Authority from itself; but that the Use of the Justinian Law was in such a Manner received, that as often as either Reason or Analogy was necessary to interpret the antient or modern Laws, or that neither a Custom, or an express Law could be found, Recourse was then had to that Justinian Body of Laws; both as being the best and richest Promptuary, with regard to Points of Law, as well as that it from Reason and Analogy happily supplied a Law in Cases at that time undecided. It is certain the antient Romans, with regard to the Marine, admitted much after the same manner of the Rhodian Law, as we and our neighbouring Na-
tions do of the Oleronian; (a) yet at the same time, neither of these Laws acquired that Power, by Virtue of any Authority of their own which they received on their being first enacted. And as several other Academies thro' the Western Parts of Europe, in the Prosecution of their Studies, in Process of Time, herein imitated that of Bononia; thus likewise other Kingdoms and Republics, in their Use of the Imperial Law, partly copyed after the Empire, retaining at all times and Places their own antient Customs and Laws before enacted, as no way depending on the Justinian Body, according to the respective different Form of each Government; as well as the Liberty of enacting and making Use of new ones. Neither was that Imperial Law, as such, any where followed in the the West, as the simple Rule of Right; but admitted only with the Moderations, we have just mentioned; which is plain to any one, as well from the numerous Volumes of the various Customs and Sanctions which the French, Spaniards, Bohemians, Hungarians, Polonians, Sicilians, Dutch, Italians, and the several German Republics, and others make use of, as from the numberless Decisions and Commentaries on them, every where to be met with. The Feudal Laws or customs moreover of the Lombards, compiled in the same Age by Gerard Niger, and Obertus de Orto, Cufuls of Millan, as well as some Sanctions of the later Emperors, which, merely as rational, are often also in like Manner, received beyond the limits

(a) See Note p. 54.
limits of the Roman Empire, were usually joined in one Body with the Justinian Laws. There is, in a Lusitanic Constitution concerning this Matter, a remarkable Instance of the imperial Law, being received in the manner we have mentioned. Where any Law Suit arose, relating to a subject about which neither the Laws or Customs of the Kingdom have decreed any Thing, (and not otherwise) sendo materia que non fragma peciado; maudamos que seja julgado po las leis Imperiaes posso que es sacros Canones deferminam, o contrario as quas leis imperia es Mau-
damos simamente guardar po la boa razam em que fam saudadas, to wit, in civil Affairs, then it was to be decided by the Imperial Law, unless the sacred Canons were oppos-
"fite. Nor do other Nations of the West, which have received that Law, at present act differently. Consult as to what relates to the Spaniards in this point, Gregorius Lopez upon the Partites and Alphonius de Azavedo upon the Royal Constitutions. || As to the French; says Choppin § Nos Galli de Quiritium iure iia censemus, co fuicut uti nos, quatenus ei Lex Gallica non refragetur —— We French form this Judgment concerning the Imperial Law, to wit, that we make use of it, so far as the Gallican Law is not opposed by it. Bodinus, Galieimns Rancimus, § Recubius, * Carolis a Grafsaliis, and others easy to be met with, speak to the same Purpose. Nay even all Kind of Study of the Imperial Law, was afterwards forbid in the University.
fity of Paris, † or in the Places adjacent to it, as well as all Citations whatsoever out of the same Law, both in the Courts, and else-
where throughout France. With regard likewise to the Empire itself, or Germany and Italy, it is plain, that in Decisions, several other Laws and Customs must of Necessity be made Use of in those Nations. See concerning the Use as well of the Laws of the Lombards, as of the Franks, besides the Roman, in the Kingdoms of Naples and Sicily, after the Justinian Law was thus re-
vised in the West, Andreae de Isernia, Caro-
lines Tapia, Andreae Molfesi, Martinus Nita, † together with Bartolus, § and the golden Additions of Julius Ferettus to his Writings. And on this Head, exclusive of the numberless Decisions in which other Laws as well as the Justinian are frequent-
ly cited, the common Collections of the Constitutions, both antient and modern in the German empire, and of its Customs, very different from the Justinian Laws, are to be consulted; but especially that of Mel-
cior Gelosius with his Prologomenas upon it. The People too in the Empire, as well as Kingdoms and particular Cities, often visibly abound with a great Number of their own respective Laws and Customs. Con-
Sult, likewise on this Matter, Francisco Suarez, § in his Books of the Laws. And altho’ this imperial Law is also made Use of both in the Courts and Universities of Scotland, yet this Use, is no other than that of
a foreign Law, which furnishes Disputants with Reasons in themselves most excellent, not as of a Law obtaining any authority at all, as such; for it is in that Nation expressly provided * by their acts of Parliament, that no other Laws shall be of any Force there, except—que sint regni et c. 79. communes Regni—the statutes and common Laws of the Realm. But we have treated fully enough of this Matter.

**S E C T. V.**

A Conjecture how it happened that the *Justinian* Law, was in the Reign of the Emperor *Lotharius* the 2d, or in the abovementioned Age, so freely embraced by the Christian Princes, and the People in the West.

We are of Opinion, that so many Christian Princes and People, throughout the West, the more willingly and heartily admitted the Use, such as it was, of the Imperial Law, thus revived; by how much the more, Pope *Innocent* the 2d, about the same time, and that too to the manifestly and highly odious Infringement of the Civil Government, earnestly pressed them to receive every where the Papal Decrees, collected by his Authority, as the only body of Laws.
according to which they were to regulate their Actions. *Ordnericus Vitalis (a) the Monk, making mention of a general Council held at Rome by this Pope, and of those who reported thither, says— *Multa cis Papa de princeis codicibus propalavit, in signemq; sacrorum Decretorum textum congetit. Scd nimis abundans per universam or

This Pope opened unto them many things out of the antient Codes, and compiled a celebrated Text of sacred Decrees; but the Hearts of earthly minded Persons, thro’ the wickedness, which then too much abounded throughout the World, were hardened against the Ecclesiastical Decrees. Thus with Effrontery, Priests puffed up with Ambition, usually bellow out against those, who with Honesty and Piety are refractory to those wicked Arts, which they make use of to delude and cozen both Princes and People, *unde remeatibus ad sua magistris apostolica Decreta passim per regna divulgata sunt, sed nihil, utmanifeste patet, oppressis et open desiderantibus profectunt, quoniam a Principibus et Optimatibus Regnorum cum subjectis plebibus parvi pensa sunt—from whence the Fathers returning to their own Countries, the Apostolical Decrees were pub-

(a) Ordnericus Vitalis, born at Attlingbham on the Severn, in the Year 1075. He wrote Thirteen Books of Ecclesiastical History which begin with the Nativity of our Saviour and come down to the Year 1142. Collier.