

Sect. 3.

The Authority of the Civil, Canon, and Feudal Laws and
Some foreign Sea-Laws in Scotland.

10 The Civil Law is effectually Naturalized in Scotland and received
by us in Aid of and Subserviency to our own Law, when it is either
deficient, or wants Explanation. For the great Foundation of our Law
and Forms, so hoisted and interwoven therewith, that our Judges have
Recourse to that excellent Fountain of Equity and Justice, where
our own Customs, ^{& Statutes} are silent and defective, to guide them in supplying
and interpreting these. The Parliament doth in some Statutes expressly
enjoin it to be our Law Act. 69. & 80. Par. 6. J. 5. Act. 22. Par. 5. 2. M.
where Falshood is ordained to be punished according to the Civil Law,
which is there called the common Law, for that we use it in common
with other Nations: and ^{knights} ~~knights~~ ^{knights} are ~~ordained~~ to be forfeited for Treason
committed by their predecessors according to the same common Law, tho
we had then no Special Law for so doing. Again the general Revocation
of our Princes are founded upon this common Law Act. 51. Par. 4. J. 4.
Act. 70. Par. 6. J. 5. Act. 28. Par. 6. 2. M. Act. 31. Par. ii. J. 6. Act. 9.
Par. i. Ch. i.

The Parliament hath in other Acts tacitly acknowledged the Force and
Authority of the Civil Law, as when all barons and freeholders were
appointed to keep their eldest sons and heirs for the space of
Three Years at Schools of Art and Law Act. 64. Par. 5. J. 4.
i.e. Canon and Civil Law only then taught: which could be for
no other End, than in order to practice. Further it appears from
an Act made by 2. M. 19. April. 1587 in Favour of the reformed
Religion

Religion recorded Act. 31. Par. i. J. 6. abrogating Constitutions of the
Civil Law contrary thereto, that the Civil Law was then in Force with us:
seeing Abrogation implies Constitution, as Privilege supponit
habitum. Besides, the Lords of Session have made several Acts of
Parliament conform. to the Civil Law, which have been ratified and approved
by the Parliament Act. 18. Par. 23. J. 6.

Again Students are admitted Advocates upon a Trial of their Know-
ledge of the Civil Law; as a Qualification for the better understanding
of our own Municipal Laws, that they may be able to apply the Gene-
ral Rules of Natural Reason and Equity, to clear up any Difficulties
or Obscurities, and supply any Defects or Omissions that occur in these
Laws. And by an Article of the Union (Art. 19.) no Writer to the Sign-
et is capable to be admitted a Lord of the Session, till two years after
he hath undergone a Trial in the Civil Law before the Faculty of Advoc-
ates, and hath been found qualified by them for the Office of Advocate, or
Now is it to be supposed, that such Candidates for the Office of Advocate, or
Judge in the Court of Session, are to be tried upon their Knowledge in
a Law, that is not binding or of Force in their subsequent practice:
that the Civil Law is of great Weight and Authority in Scotland, is yet
further cleared from the Testimonies of our own Lawyers (Shene. Hand.
ed lib. 1. Reg. Maj. Cap. 7. 5. 2. Craig. Feud. lib. 1. Tit. 2. 5. 8. & 9.) And Histo-
rians (H. Boet. Hist. lib. 9. Camerar. de Scot. Instrum. lib. 2. Cap. 4) And the
Jurists and Lawyers of other Nations (Foreat. de Gal. Imper. lib. 7. Polit.
Virg. Hist. Ang. lib. 1. R. Duch de Auth. Jur. Civil. lib. 2. Cap. 10. 5. 15. 16. 17.

× R. James the first was so much in Love with the Civil Law, that as H.
Boet. lib. 17. observes, he made an Act that no Man should succeed to a great
estate in Scotland who did not understand the Civil Law. When R. James the
first instituted the Session, he appointed judges thereof who were skilled in
the Civil and Canon Laws, and who in their Decisions observing the Civil
Law might recommend it to posterity. For propagating the Study whereof
R. James the first erected two professions of Civil Law, one at St. Andrews and
the other at Aberdeen: tho the former of these be now extinct, and the latter
the latter having dwindled away and resolved into the perfunctory reading of
a publick Lesson by one called a Civilist, who, as St. George M. Kenzie (Vicer.
on Act. 18. Par. 23. J. 6.) says, in his Time had ordinarily as much Law as
those that came to hear him, that is just non at all. We had also a
profession of the Civil Law before the Reformation in the University of
Glasgow, which after it had been in a Manner, spite, by withdrawing the En-
couragement thereof, was revived and set on foot again by the Royal Bounty
of King James the first. Whose glorious Example our late Sovereign R. George the first
copying after, has erected the like profession in the College of Edinburgh:
by which Means much of the Nations Stock and Treasure is saved and kept
at home, that used to be exported and spent in the Education of Youth abroad.
who designed to serve their Country in the Capacity of Lawyers: Not to men-
tion what Money foreigners import upon such Account to Scotland where they
may now learn the Civil Law, to as good purpose as in any European Uni-
versity. After all I cannot but admire at Craigs saying (Feud. lib. 1. Tit. 2.
5. 8.) Nulli adhuc quod sciam apud nos fuerant juris Professores, qui Jur. pub.
lic docerent.
Having by the Arguments aforesaid, which I took upon to be conclusive proof
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