

11.
Absence in
him of the
conservative
spirit.

to a much smaller extent—that respect for the prevailing order of things; he therefore did not favour that compromise which, if not in theory yet doubtless in practice, the best-known thinkers of very different schools had nearly always in the end resorted to. It is true that he did not propose to alter the moral code of civilised humanity, but he attacked its application in one very important department,—in the department of the legislation of his country. He was the first to show that the existing laws of the country could not claim from enlightened and thinking minds that respect with which they were conventionally treated. But instead of resorting, as was the custom on the Continent, to the legal deliverances of the Roman Jurists codified when the Roman Empire was approaching its decline, he made a bold attempt to deal with the foundations of law through the principles of moral philosophy. His work did not result in a new and complete code such as was elaborated during the reign and at the suggestion of the first Napoleon in France, nor did he initiate that philosophical and historical study of Roman law which, for a whole century, constituted a large and important part of the labours of a brilliant succession of Jurists in Germany.¹ Bentham and his followers dealt with many of the

¹ And yet, this great school of what are called “Romanists” in Germany traces one of its sources to an English scholar. It was about the year 1785 that the Göttingen Professor, Gustav Hugo, began his Lecture Course on “Roman Law,” taking as a text-book the celebrated 44th chapter of Gibbon’s ‘History of the Decline and Fall

of the Roman Empire.’ And when John Austin (1790-1859) attempted, as Professor of Jurisprudence at the newly established University of London, to introduce the philosophical study of Law, he prepared himself by resorting to the University of Bonn, where some of the most eminent Romanists were then lecturing.