

great work ; good jurisprudence is a thing of slow growth, and we must be content to see one race of lawyers advancing but a little beyond its predecessors, until at last a thorough understanding of our law is reached.—Legislation on single branches of our commercial and real estate law, which we understand, is certainly advisable, especially to regulate new forms of business, like insurance etc.; but this is very different from attempting to lay anew the foundations of our jurisprudence upon the ruins of our present system.

“Where is the text writer to-day who would undertake to write a book embracing the whole of our law? The Romans complained often enough of the burden of their case law; but the whole people took such an interest and pride in their legal proceedings that they recognized the fact that too early codification would be only a change for the worse; let us imitate their patience and wisdom, and not keep pulling up our institutions by the roots, in order to hasten their growth, but in every way seek to encourage the necessary theoretical and historical study of our law.

“The Continental Codes offer as little encouragement for attempting to codify our law, as does that of Rome. As before stated, those nations had no national law at the time those codes were adopted; they were adopted as the only possible refuge from a state of things which a Code would deliberately introduce among us.—A greater evil than the destruction of the natural law of a people cannot be imagined. In the middle ages, the introduction of the foreign Roman law was followed everywhere by great oppression of the poor and ignorant classes; and one of the great cries of the revolted peasants was: “Give us back our old law.”—We have seen in California, the only important state which has adopted the proposed Code, that the enormous growth of the power of grasping corporations under this Code, drove the people to Kearneyism and a half communistic Constitution. And now that many of its best citizens have fled to us, should we enact this same Code and drive them on again?

“This Code in its material parts appears to be a copy of the Code Napoleon; it certainly is the result of the same conceit, which characterized the period of the French Revolution, that the human mind was equal to any undertaking,

that it could construct systems of state, religion and law by itself, without regard to the historical development of the particular people. What utter failures their theoretical states and religions were, is universally acknowledged; and the best jurists of all countries,—except perhaps in France,—are coming to the same opinion as regards their legal systems.

“The proposed Civil Code shows no regard to the historical development of our law. Our family law, for example concerning legitimacy, is to be reconstructed; our modes of acquiring property and making contracts are to be changed; and, in general, a lawyer brought up under the Code Napoleon will find himself more familiar with the system and terminology than a practitioner under the Common Law.

“Finally, the Code will build up a Chinese wall around the State of New York; the only important State with a Code is distant California; none of the Eastern States have followed its example; why should they follow that of New York?—Their legislatures take time to consider before they pass such important acts.—It will certainly be a great detriment to New York's commerce, if outside merchants know that in their dealings with us they may have to be governed by a strange system of law. It was particularly to escape this diversity of legal systems in the same country, and the consequent centrifugal force, that the European Codes were adopted; one strong band of union between the States would disappear with the system of the Common Law.

“This diversity of law is alone a sufficient argument against the adoption of the Code, unless we have assurance that the other states will follow.

“*Nolluimus leges Angliæ mutare.*”

The remainder of Mr. Miller's pamphlet is devoted to an examination of Mr. Field's Code, with which we are not particularly concerned. If Mr. Miller cares to have our experience of a Code, it may be given in two words,—that in spite of all the dissatisfaction and complaint which its defects and errors have excited, and reference to which may be found scattered through many judicial decisions, we have, nevertheless, found it useful; we cling to it, and would not willingly be without it.