

The distinction between the written law (*jus scriptum*) and the unwritten law (*jus non scriptum*) (*j*), depends upon the mode of formation, and not, as one might suppose, upon the material fact of the writing. The *jus scriptum* is that law which is produced by one of the public authorities invested with a legislative rôle, and which will, as a rule, be reduced to writing; the *jus non*

stance, the difficulty is to know whether the texts which attribute a rule to the *jus gentium* do so in the technical sense, meaning that it is one of which non-citizens may avail themselves, or in the vague sense, meaning that it exists everywhere. The Institutes, say, for example 1, 3, *De j. pers.*, 2, that slavery pertains to the *jus gentium*, while there seems scarcely any doubt that *dominica potestas* is peculiar to the citizens. There is, I believe, to say the least, much exaggeration in the theory according to which the *jus gentium* would comprise a sort of importation made at Rome, notably after the second Punic war, of the law of the most important non-Latin people with whom the Romans then came into relation, that is to say, the Hellenic populations of *Magna Graecia*, of Sicily, or of still more distant places (Gide, *Condition privée de la femme*, 2nd ed., 1885, p. 127 *et seq.*). As Pernice justly observes, the really Greek institutions of commercial law were grafted only with difficulty upon the institutions of the *jus gentium*, which had been already established before them, and independently of them: the *nauticum faenus* upon the *mutuum*, the *lex Rhodia de jactu* upon the law of letting, the *hypotheca*, if it comes from Greece, upon pledge. The institutions of the *jus gentium* developed rather in an independent manner within the Roman State in consequence of the juxtaposition of Roman citizens and subject foreigners, especially, as I hold, after the *lex Aebutia*, and almost exclusively in the matter of property and personal rights (*patrimoine*).

(*j*) Ulpian. *D.*, 1, 1, *De j. et j.*, 6, 1=Inst., 1, 2, *De j. nat.*, 3. Cf. A. Bernice, *Z.S. St.* 20, 1899, pp. 162-171.