

*ræle*), added by certain writers only, this is, according to some, an ideal law, somewhat akin to the law common to all men, elsewhere designated by the name of the *jus gentium*(*g*); according to others, a law which they take to be common to all living beings, just as the *jus gentium* is to all men, and the *jus civile* to all citizens(*h*). In its most scientific and simplest form, this division, confined to its two first terms, corresponds to the distinction between the most ancient rules, made for citizens alone, and the rules, more recent in my opinion, afterwards made for the relations between citizens and strangers admitted to the benefit of the protection of the Roman laws(*i*).

(*g*) Cicero, *De Leg.*, 2, 4, 8, *Inst.*, 1, 2, *De j. nat.* 11, etc.

(*h*) Ulpian, *D.*, *h. t.* 1, 2=*Inst.*, 1, 2, *De j. nat.*, *pr.*: *Jus naturale est quod natura omnia animalia docuit: nam jus istud non humani generis proprium, sed omnium animalium. . commune est. Hinc descendit maris atque feminae conjunctio quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio.* This idea of Ulpian's, which has been very roughly handled from the standpoint of theoretical law is, as Schulin remarks, *Lehrbuch*, p. 80, to be found already expressed in the writings of old Homer and the Greek philosophers, and is not devoid of meaning from the standpoint of the history of law. It is precisely by like reasoning that in our day the existence of marriage at the very beginning of human society is maintained by citing the habits of the higher animals. See for example Westermarck's *Origine du mariage dans l'espèce humaine*, 1895, pp. 10 *et seq.*, 40 *et seq.*

(*i*) See on this distinction, Krueger, *Sourcees*, §§ 6-17; Brunel-Lenel, *Gesch. und Quell.*, § 19; Pernice, *Z. S. St.*, 20, 1899, pp. 138-142. Enumerations of the rules of the *jus gentium* are given by Krueger, p. 56 *et seq.*, by Pernice, *Gesch. und Quell.* p. 102, and by Mommsea, *Dr. publ.*, 6, 2, p. 222, n. 1. In more than one in-