

BOOK REVIEW

The Cambridge Companion to Roman Law. Edited by DAVID JOHNSTON. Cambridge: Cambridge University Press, 2015. Pp. xiv + 539. Paper, \$36.99. ISBN 978-0-521-71944-0.

This new collection of essays is indeed a wonderful companion. It is not meant to be a textbook for a course on Roman law, but I intend to make several of the chapters recommended reading for my students. Each chapter (some of which are refreshingly brief) is a very good place to start if you need information on that topic, including current bibliography. Although there is very much good here for any student or historian interested in Roman law, administration or statecraft, the specialist will likely not find too much of interest on his or her field of expertise.

The essays treat all the major issues surrounding the study of Roman law, including the creation of law during republic and empire, interpretation of sources, social influences on the development of law, and influence upon the early Christian world. Since the reader is taken on a breathtaking journey from the time before the 12 Tables, past Justinian's *Corpus Iuris Civilis*, and into the modern world, the essayists cannot treat specific topics in much depth. But this is probably what a good companion book should be, that is, a very professional survey of sources, key issues, historical development and scholarship from an impressive array of specialists in the field.

The book is divided into six parts. Taken together, Parts I and II provide a nice summary of source material, provincial law and modern analytical approaches to the interpretation of law. This reader would like to have seen a more direct presentation of the importance of the praetor's edict in these introductory chapters, but the *ius honorarium* certainly is discussed in subsequent chapters. In Chapter 2 ("Roman Law and Its Intellectual Context"), Laurens Winkel informs us about the different modern schools of Roman legal analysis. The pure jurists who analyze the law as a self-referential enterprise are frequently at odds with those who see legal developments influenced by social realities or philosophical thought. As often, the truth lies somewhere in between. Jurists and the law are by nature self-referential and ultra-conservative, yet the law does not develop in a

vacuum: contract law needed to change to meet the growing needs of a burgeoning economy as the Roman empire grew, public law needed to bend to the reality of an emperor and ultimately to the Christianizing of the empire, etc. While it is true that Roman law (and law in general) did not like to change (e.g., the 12 Tables were never repealed, the Digest still cites republican jurists), it inevitably had to account for new realities on the ground.

What emerges from David Ibbetson's and John Richardson's presentations in Part II is a Roman empire with laws hand-crafted by jurists (and the emperors behind them), who frequently squabbled with each other about proper interpretation of legal principles. The contradictions between jurists in the Digest belie the notion that Roman law was a consistent monolith of rationality. Governors in the provinces had to wade through a morass of sometimes contradictory case law and legal opinions together with advice from their legal councils. Presented with various lawsuits, governors naturally tried to apply the law that they knew well from Rome itself, even though the litigants might be peregrines. Richardson correctly observes that the provinces were administered by an admixture of local and Roman legal procedures and principles. This amalgam differed from province to province and from century to century. We must remember that first-century Egypt operated very differently from, for example, fourth-century Bithynia. But in all provinces, Roman law gradually but surely extended its tentacles. This was one very important way in which conquered lands were Romanized.

Part III on documentary evidence dovetails nicely with Part II in that it develops our understanding of how access to the governor's court helped to Romanize the provinces. We see even non-citizens possessing documents modeled on Roman legal formulas: foreigners are behaving as if they were Roman citizens. Presumably the governor or his legates would privilege a litigant who could argue his case based on Roman legal principles or present documents fashioned in the proper Roman way. Chapters 5 ("Documents in Roman Practice," by Joseph Georg Wolf) and 6 ("Writing in Roman Legal Contexts," by Elizabeth A. Meyer) present valuable insights on how documentary evidence was used by individuals in the Roman world. Wolf offers a wonderful summary of the wax tablets found in the vicinity of Pompeii and in Transylvania. Meyer notes how western Romans (as opposed to easterners who generally preferred papyrus, e.g., in Egypt, or the Babatha archive found in Judaea) always preferred to write on wood-framed wax tablets that could be securely sealed. From early in the republic, Romans valued doubled-up wooden documentation that had been sealed by witnesses: we consistently see such tablets used in mancipatory wills, as courtroom evidence, and in

personal archives. Meyer's claims would be strengthened by consideration of the dozens of wood veneer tablets recently uncovered in the forts near Hadrian's Wall in England.

Part III concludes with Caroline Humfress' presentation of evidence for Roman law found in patristic sources (chapter 7), and with Wolfgang Kaiser's very detailed explication of the creation of Justinian's *Corpus Iuris Civilis* (chapter 8). Part IV on private law effectively covers all the basics on family, civil status, property, succession, commerce, delicts and procedure. Space does not allow for a fitting consideration of all the erudition contained in these chapters, so I must limit myself to a minor critique. In Chapter 10, Paul Du Plessis hints at the importance of property (especially land) rights within the narrative of Roman history. Since wealth largely resided within real estate in the ancient Roman world, who could own it and transfer it was always of great public and private concern. Land ownership is at the core of the 12 Tables, Italian expansion, Gracchan reforms, Social War, provincial administration, and Caracalla's grant of universal citizenship. But Du Plessis does not develop this new narrative. Similarly, David Johnston in Chapter 11 also mentions how the role of testamentary law needs to be better analyzed within the narrative of Roman social history. This reader wishes that these two fine scholars both would have spent less time with summaries of civil law provisions, and more on the important roles that property ownership and testaments played in the unfolding of Roman history. These are studies that are sorely needed.

Part V discusses criminal and public law. Andrew Lintott in Chapter 15 ("Crime and Punishment") tackles among other topics the thorny issue of what criminal proceedings looked like before the arrival of the standing criminal courts (*quaestiones perpetuae*) in the late republic. Since the evidence is sparse and murky, certainty is elusive. Lintott suggests that, in heinous crimes against the whole community, the assembly would have been invoked as a jury with a consul/praetor prosecuting from the rostra. But, for lesser crimes, individuals were probably tried in a one-stage process before a *quaestor parricidi* or praetor. Such cases had to be dispatched in a more efficient manner, especially for the lowlier members of society. If sentenced, the condemned could then appeal (*provocatio*) to the full assembly. Lintott's suggestion makes good sense of the evidence we have.

Romanists interested in extending their gaze beyond Justinian's codification (to "look occasionally over the ever-higher fence that seems to separate students

of east and west,” as Bernard H. Stolte puts it in chapter 17, “The Law of New Rome: Byzantine Law”) will find Part VI well worth the glance. What strikes this reader is how the study of Roman law consistently remained at the core of intellectual pursuits throughout the Byzantine and medieval worlds (after the important discovery of a copy of the Digest in Bologna). Stolte mentions how Byzantine scholars transcribed Latin legal terms by writing the stems of adjectives and nouns in Latin, but writing their terminations in Greek letters. Eventually the Latin letters totally disappeared to be translated by Greek words proper. What a wonderful metaphor for the Byzantine world! In medieval Europe for centuries, no city could be great without a top-notch law school and eminent professors of the law gracing her lecture halls (Laurent Mayali in Chapter 18, “The Legacy of Roman Law”). Roman law (via the Digest) was important not so much because of its specific content, but because it taught European intellectuals how to think critically and to establish sensible rules, especially about trade and socio-political relations. As Reinhard Zimmermann shows (Chapter 21, “Roman Law in the Modern World”), the particulars of modern civil codes are often quite different from the provisions in ancient Roman law (the Scottish and South African codes are most faithful to the Roman).

Our greatest legal inheritance from the Romans is critical textual analysis. Roman juristic hermeneutics interacted with and was applied to medieval palace politics and canon law to create the *ius commune*, a fertile loam for modern western law. Ancient Roman jurists taught Europeans how to think logically yet practically, not just about law and statecraft, but about texts—this is the main legacy of Roman law, more so than particular appropriations from sections of an imperial code. Western society would have unfolded in a rather different fashion, had it not been for the discovery of Justinian’s Digest in northern Italy, which led directly to the creation of the first European university in Bologna in the late 12th century. It is arguably this legal text, as much as anything written by Cicero or Virgil, that has most affected the course of western history.

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