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Book Review: The Law of the Ancient Romans

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BOOK REVIEW

THE LAW OF THE ANCIENT ROMANS. BY ALAN WATSON. Dallas, Texas: Southern Methodist University Press. 1970. Pp. ix, 116. Index. \$5.95 (\$2.45 Paper).

Rome's greatest legacy to the modern world is its private law. And, as Professor Watson states, even in the countries which have adopted Anglo-American law, the influence of Roman law is much greater than is often admitted. Due to historical circumstances and the lack of familiarity with Roman law, this is a fact most Anglo-American lawyers often do not realize.

It is well-known that the Romans were extremely interested in legal matters and that their capacity to separate law from religion and morals enabled them, as Watson accurately points out, to shape a rational and almost scientific system of law.

Watson gives much credit to *Gaius's Institutes*, which is, of course, a concise elementary book, albeit an unrealistic picture of Roman law. Gaius was almost unknown by his contemporaries.

Another point that Watson makes clear is that custom as a source of new law was very unimportant. Questions such as how long a custom must be observed before it becomes law, or which prevails in a conflict between statute and custom, were never asked, much less answered. Being a scholar very familiar with the sources of Roman law, as demonstrated in his many publications, Watson emphasizes the importance of the praetorian edict which contained the forms of action and the procedural remedies. He makes clear the fact that the effect of edict and statutes depended upon their interpretation by the jurists, not by the judges. This underscores the prominent and almost absolute role of the jurists in the development of Roman law. Statutes were passed by assemblies of people, but compared with the writings of the jurists, their role had a somewhat limited effect on the development of private law. In the Empire, when new sources of law developed, *i.e.*, decrees of the senate and imperial constitutions, the jurists again played the prominent role by interpreting these new sources.

Having written four important books on the law of obligations, persons, property and succession in the Late Roman Republic, and on Roman private law around 200 B.C., Watson succeeds in giving a brief living picture of these subjects. In many cases this is accomplished with original contributions produced by his own research. In the classification of obligations he follows the Institutes of Gaius and of Justinian, even though he is fully aware that a classification more fitting the mind of the classical Roman jurists could have been formulated following the praetorian edict. The legal aptitude of the Romans appears more obvious in the law of obligations and especially in consensual contracts. The Roman law of obligations, therefore, has been the most influential in its effect on future generations. The Romans did not develop a general theory of contract, but rather several distinct types. In fact, the Romans did not promulgate general theories of any sort. Assertions to the contrary are generally dogmatic elaborations based on misinterpreted Roman sources. The consensual contracts that require no formalities, but merely

the agreement of the parties in any manner of expression, are obvious achievements of the Roman legal genius.

Drawing from the latest research, Watson indicates the murder of the last great Roman jurist Ulpian, in 228 A.D., by the Praetorian Guard, as the starting point of the postclassical period. In chapter ten, "Postclassical Law and Justinian," Watson describes the fate of Roman law in the east and west of the Roman Empire, culminating in the Justinian compilation of the sixth century. That work constitutes what we call today the *Corpus Juris Civilis* and has four books: the Digest, an anthology of classical juristic writings; the Institutes, an introductory textbook dedicated to the youth desirous of learning the law; the Code, a collection of imperial constitutions; and the Novels, or new constitutions.

Chapter eleven deals with the subsequent history of Roman law. An appendix of selected texts and a bibliography of selected general works in English completes this illuminating synthesis of Roman law that should be welcomed by classical scholars, lawyers, and laymen alike.

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