

Bibliographical essay

It may be useful to begin with a note on the main modern works of reference and periodicals as well as the main ancient sources. The standard abbreviations used for them are also noted here.

TEXTBOOKS ON ROMAN LAW

For a basic account of the main institutions of Roman law, B. Nicholas, *An Introduction to Roman Law* (1962) is clear, elegant and valuable. For detailed information, resort to one of the larger textbooks will be necessary. The leading modern account is that of M. Kaser, *Das römische Privatrecht* (1971–5). In English the leading textbook is by W. W. Buckland, *A Textbook on Roman Law* (1963), a shade dry but exceptionally reliable and accurate; an alternative is J. A. C. Thomas, *Textbook on Roman Law* (1976). H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law* (1972), approaches the subject historically, and for a historian is probably a good place to start. F. Schulz, *Classical Roman Law* (1951) is a work by a great scholar which is sometimes idiosyncratic, often provocative but always interesting. The leading account of Roman law in its social context remains J. A. Crook, *Law and Life of Rome* (1967).

A. Berger, *Encyclopedic Dictionary of Roman Law* (1953) gives convenient brief entries on Roman legal terms and concepts.

OTHER GENERAL WORKS

F. Schulz, *Principles of Roman Law* (1936) attempts from the mass of Roman legal institutions to distil the essence, and has interesting chapters on such things as abstraction, tradition, fidelity and security. D. Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (1969) is a *tour de force*, full of remarkable insights, although not all have been shared by other scholars.

PERIODICALS

Periodical inflation means that only a few titles can be mentioned here. Leading journals, together with their usual abbreviations, are: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* (*SZ* or *ZSS*) (Weimar); *Tijdschrift voor Rechtsgeschiedenis* (*TR*) (Haarlem), *Studia et documenta historiae et iuris* (*SDHI*)

(Rome), *Bullettino del istituto di diritto romano (BIDR)* (Rome), *Revue internationale des droits de l'antiquité (RIDA)* (Brussels); *Revue historique de droit français et étranger (RHD)* (Paris). The journals *Labeo* (Naples) and *IURA* (Naples) contain in addition useful annual bibliographies of publications on Roman law and related subjects. A bibliography is also published by the Institut de droit romain in Paris.

Some useful sources and materials can be accessed on or via a website maintained at Aberdeen University: <http://www.abdn.ac.uk/~law113/rl/sites.html>

SOURCES

The edition of the *Corpus iuris civilis* most commonly used is the so-called stereotype edition (frequently reprinted), volume 1 of which contains the Institutes and Digest, edited by P. Krueger and Th. Mommsen; volume 2 contains the Code, edited by P. Krueger; and volume 3 the Novels, edited by R. Schoell and W. Kroll. There is an *editio maior* of the Digest by Th. Mommsen, *Digesta Iustiniani Augusti* (1870) with a preface containing valuable information on the textual tradition of the Digest. The *editio maior* of Justinian's Code is by P. Krueger, *Codex Iustinianus* (1877).

There are many editions of Gaius's Institutes. A reliable one is by B. Kübler and E. Seckel in the Teubner series. The principal critical edition with commentary is by M. David and H. Nelson, continued by M. David and U. Manthe, *Gaii Institutionum commentarii quattuor*. This started in 1954 and after a long gap the latest volume appeared in 1992, taking it up to book 3.87. An *editio minor* based on this critical edition has already appeared (1964).

The texts of most Roman statutes attested epigraphically are given in volume 1 of S. Riccobono et al., *Fontes iuris romani anteiustiniani (FIRA)* (1940–3, new edn 1968–9). They also appear with commentary in M. Crawford, ed., *Roman Statutes* (1996), together with statutes attested by literary sources. A summary of the content of all Roman statutes is given in G. Rotondi, *Leges publicae populi Romani* (reprint, 1962); a new edition is in progress.

FIRA is also a convenient source for some of the works of classical jurists predating the Digest (vol. 2) and legal documents such as inscriptions and papyri (vol. 3). Other documents of legal practice are published in G. Camodeca, *L'archivio puteolano dei Sulpicii I* (1992) and discussed by J. G. Wolf in a series of publications: see Wolf 1985 and Wolf and Crook 1989 in the bibliography, both with further references. The Herculaneum tablets are conventionally abbreviated as TH; the Pompeian ones as TP (although Camodeca uses the form TP Sulp for those he discusses). N. Lewis, Y. Yadin and J. C. Greenfield, *The Documents from the Bar Kokhba Period in the Cave of Letters* (1989) publish the papyri from the archive of Babatha, ranging from the first to second century AD.

TRANSLATIONS

A. Watson, ed., *The Digest of Justinian* (1985) prints a translation opposite the text of Mommsen's *editio maior*. The translation is the work of many different trans-

lators and is for that reason uneven, but it is the best version available in English. Corrections and comments on it are posted on a website: http://www.abdn.ac.uk/~law113/rl/dig/dg_main.html. A more reliable translation, into German, is the continuing version by O. Behrends et al., *Corpus iuris civilis: Text und Übersetzung* (Heidelberg, 1990–). So far this has covered Justinian's Institutes and reached book 10 of the Digest. English translations of the Institutes of Gaius are provided by F. de Zulueta, *The Institutes of Gaius* (1946) with commentary (1953), and W. M. Gordon and O. F. Robinson, *The Institutes of Gaius* (1988). Recent translations of Justinian's Institutes are by J. A. C. Thomas, *The Institutes of Justinian* (1975) with commentary, and P. Birks and G. McLeod, *The Institutes of Justinian* (1987), the accompanying commentary on which is E. Metzger, ed., *A Companion to Justinian's Institutes* (1998).

CHAPTER 1: INTRODUCTION

Extensive general accounts of the sources of Roman law are given in H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law* (1972) and A. A. Schiller, *Roman Law: Mechanisms of Development* (1978). F. Wieacker, *Römische Rechtsgeschichte I* (1988) gives a magisterial introduction to use of the sources followed by an account of Roman legal history until the end of the republic. Volume II (to appear posthumously) will cover the principate, but unfortunately without the rich apparatus of notes provided in volume I.

On the jurists in particular, F. Schulz, *History of Roman Legal Science* (1946) remains indispensable. W. Kunkel, *Herkunft und soziale Stellung der römischen Juristen* (1967) reconstructs biographies of the individual jurists so far as possible. Recent work on the schools of jurists is to be found in G. L. Falchi, *Le controversie tra sabiniani e proculiani* (1981) as well as in the papers by Stein (1972) and Liebs (1976) referred to in the bibliography. A. M. Honoré gives fascinating accounts of the work of individual jurists in *Gaius* (1962) and *Ulpian* (1982), although the method – analysing the jurist's Latin style – on which they are based is controversial. A substantial number of monographs on individual juristic works has appeared from the Freiburg school under Professor J. G. Wolf; recent highlights include the works by B. Eckardt (1978), U. Manthe (1982) and J. Schmidt-Ott (1993) listed in the bibliography; others can be found in the series *Freiburger rechtsgeschichtliche Abhandlungen*. Some useful essays on individual jurists are contained in the world's largest Festschrift (for J. Vogt), *Aufstieg und Niedergang der römischen Welt* vol. II 15 (1976).

On the emperor, F. Millar, *The Emperor in the Roman World* (1977) provides a detailed general account; A. M. Honoré, *Emperors and Lawyers* (1994), although mainly concerned with dating the tenure of different secretaries *a libellis*, gives an admirable survey of the rescript system in chs. 1–2.

ROME AND THE PROVINCES

The classic work is L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (1891). Since then a remarkable amount of interesting

material has been discovered. A modern account of the essentials is in A. Lintott, *Imperium Romanum: politics and administration* (1993). On municipal administration in the light of the *lex Irnitana*, F. Lamberti, *Tabulae irnitanae: municipalità e ius romanorum* (1993) is a useful guide, not least to further literature, while the article by Wolff (1980) cited in the bibliography covers the eastern, non-municipal side.

CHAPTER 2: SOURCES AND METHODOLOGY

F. Wieacker's *Römische Rechtsgeschichte*, already mentioned, is the best modern account on use of the sources. Two classic works are H. Kantorowicz, *Einführung in die Textkritik* (1911), concerned (as the title suggests) with textual critical questions, and F. Schulz, *Einführung in das Studium der Digesten* (1916), which provides a more general account.

O. Lenel, *Palingenesia iuris civilis* (1889) reconstructs the works of the classical jurists from the fragments contained in the Digest and so makes it possible to consider them in their original context. This work and Lenel's *Das Edictum perpetuum* (see below) are the fundamental works of modern Romanistic scholarship. Lenel's work has been modified in details, but remains essential. A useful critical review of it is given by Th. Kipp (1891); two recent articles which deal with modifications to Lenel's work are those by H. Ankum (1994) and D. Johnston (1997a); an exemplary demonstration of what can be achieved with the palingenetic method is given in D. Daube (1959): for details of all of these see the bibliography.

On interpolation in the Digest, there is a massive literature. The modern conservative tendency is outlined in M. Kaser, *Zur Methode der römischen Rechtsquellenforschung* (1972). A more radical approach was followed by F. Wieacker, whose views are now conveniently summarized in his *Römische Rechtsgeschichte*. In English, a recent brief discussion with further references is in D. Johnston (1989): see the bibliography.

CHAPTER 3: FAMILY AND INHERITANCE

R. Saller, *Patriarchy, Property and Death in the Roman Family* (1994) sets out the demographic context in which the Roman family should be viewed, with much attention to the legal sources. This provides a major corrective to earlier views about the structure of the Roman family. It also contains references to the very extensive literature in this area. K. Hopkins, *Death and Renewal* (1983) is important in setting the law of succession in similar perspective. S. Treggiari, *Roman Marriage* (1991) is a rich discussion of marriage in the light of literary and legal sources. M. Humbert, *Le remariage à Rome* (1972) is a major work on the impact on the law of the fact that many Roman marriages were of brief duration; some of his conclusions have now to be modified in the light of Treggiari's work.

On slaves, the classic work is W. W. Buckland, *The Roman Law of Slavery* (1908), which goes into great detail on virtually every conceivable question. A very brief

account is in A. Watson, *Roman Slave Law* (1987). A short and valuable historical treatment may be found in K. Bradley, *Slavery and Society at Rome* (1994).

On the law of succession, the standard modern treatise is P. Voci, *Diritto ereditario romano* (1963–7). M. Amelotti, *Il testamento romano* (1966) is an important treatment of Roman wills in the light of documentary evidence. F. von Woess, *Das römische Erbrecht und die Erbanwärter* (1911) is a marvellous work, well in advance of its time, which sets the law of succession in its context; though difficult to find, it is well worth seeking out. A more recent and rather successful work with a similar aim is E. Champlin, *Final Judgments* (1991). D. Johnston, *The Roman Law of Trusts* (1988) is mainly an account of the development of the law relating to *fideicommissa* but attempts to place this against the background of the evolution of the law of succession and (to some extent) social history in general. An important article by L. Boyer (1965) discusses legacies in their social context: see the bibliography.

CHAPTER 4: PROPERTY

On the use of land, B. W. Frier, *Landlords and Tenants in Imperial Rome* (1980) is a pioneering work which explores the law of urban leases with full reference to literary and archaeological evidence. D. Kehoe, *Investment Profit and Tenancy: the Jurists and the Roman Agrarian Economy* (1997) attempts a similar sort of exercise for rural leases.

On relations with neighbours, A. Rodger, *Owners and Neighbours in Roman Law* (1972) is a fundamental treatment especially of urban servitudes. J. M. Rainer, *Bau- und nachbarrechtliche Bestimmungen im klassischen römischen Recht* (1987) covers the wider range of remedies relevant to relations with neighbours.

CHAPTER 5: COMMERCE

An excellent, interesting, and readable account of the law of contract in general (and much more besides) is given in R. Zimmermann, *The Law of Obligations* (1990). For discussion of virtually any topic raised in this chapter, this is the best place to start, and there is therefore no need to give further references here on sale or on lending.

The major work on banking is J. Andreau, *La vie financière dans le monde romain* (1987); a briefer account by the same author is his *Banking and Business in the Roman World* (1999). From a more legal point of view, the article by Bürge (1987: see the bibliography) is also important; his criticism of the extent to which it makes sense to speak of banking in ancient Rome requires modification in the light of Andreau's work. P. Gröschler, *Die Tabellae-Urkunden aus den pompejanischen und herkulanensischen Urkundenfunden* (1997) analyses some of the surviving documents dealing with bankers.

S. Martin, *The Roman Jurists and the Organization of Private Building in the Late Republic and Early Empire* (1989) provides a clear and comprehensive account of the workings of building contracts, making full use of legal and literary evidence.

Agents have had a good deal of recent attention in useful works by A. Kirschenbaum, *Sons, Slaves and Freedmen in Roman Commerce* (1987), and particularly A. di Porto, *Impresa collettiva e schiavo manager in Roma antica* (1984) and J.-J. Aubert, *Business Managers in Ancient Rome: a Social and Economic Study of Institores 200 BC – AD 250* (1994). From a more purely legal point of view, the article in the bibliography by A. Wacke (1994) is also worth consulting.

CHAPTER 6: LITIGATION

M. Kaser, *Das römische Zivilprozessrecht* (1996) is the leading modern account of the workings of Roman civil procedure and contains substantial bibliography. O. Lenel, *Das Edictum perpetuum* (1927) reconstructs the praetor's edict, together with the formula for each action. This work laid the basis for much of modern Romanistic scholarship and, while it has been refined in details, it remains unsurpassed.

On the social context of Roman litigation, there are two books by J. M. Kelly, *Roman Litigation* (1966), and *Studies in the Civil Judicature of the Roman Republic* (1976), both interesting, the first very (perhaps excessively) critical of the extent to which Roman litigation was fair. Similar issues are discussed for the principate in P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (1970).

B. W. Frier, *The Rise of the Roman Jurists* (1985) gives a wonderfully rich account of Roman civil litigation based on Cicero's *pro Caecina*. J. A. Crook, *Legal Advocacy in the Roman World* (1995) adds another dimension to discussions of litigation by insisting on the continuing importance of the advocate. M. Peachin, *Iudex vice Caesaris* (1996), although his concern is primarily with emperors and those who deputized for them in administering justice, gives a useful account of litigation under the principate.

Provincial and municipal jurisdictions have become rather fashionable since the discovery of the *lex Irnitana*. References to the massive bibliography, a reliable text and some useful commentary are contained in F. Lamberti, *Tabulae irnitanae: municipalità e ius romanorum* (1993).

EPILOGUE

Useful short treatments of the later life of Roman law are given in R. van Caenegem, *An Historical Introduction to Private Law* (1992) and P. Stein, *Roman Law in European History* (1999). Rich and fascinating, detailed accounts may be found in P. Koschaker, *Europa and das römische Recht* (1947), J. P. Dawson, *The Oracles of the Law* (1968) and F. Wieacker, *A History of Private Law in Europe* (1995).