SOME RECENT BOOKS


Dr Alan Watson has been Professor of Civil Law and Head of the Department of Roman and Comparative Law at the University of Edinburgh since 1968 and his works on Roman Law published between 1961-1970 have established him in the forefront of modern Roman Law scholars. But in this book *The Law of the Ancient Romans* he has aimed at a wider reading public than the purely academic and has done so with consummate success.

That her system of private law is Rome's greatest legacy to the modern world is never questioned. Roman law forms the basis of all the legal systems of Western Europe except England and Scandinavia, and outside Europe the laws of places as diverse as Louisiana and Ceylon, Quebec and Japan, Abyssinia and South Africa. Even in countries firmly rooted in the Common Law tradition its influence is considerable. But despite all this Roman Law is almost always thought of as something too technically difficult and remote for the general reader, the practical lawyer or even the classical scholar.

Dr Watson in writing this book has authoritatively refuted any such suggestion, for throughout he is continually demonstrating its essential simplicity and practicality. In little more than a hundred pages he traces for the ordinary reader, the development of Roman Law from the foundation of the City, (traditionally 753 B.C.) to the time of the Europe of Justinian in the sixth century A.D., (when the centre of the Empire was no longer Rome), in a way which is readily understandable, but which stresses at the same time its extraordinary vitality and flexibility and the Roman genius for legal thought.

His opening chapter on law and the legal mind sets the scene, as it were, for his subsequent description of the system of law as a whole and his development of specific areas within that system. This chapter should dispel at the outset any idea in the minds of classical scholars that Roman Law is not for them, if only because of his emphasis on the references to law and litigation found in early Latin writers. That there was a wide interest in private law is vividly illustrated by the author's references to the comic playwright Plautus who, he points out, was not writing for the educated public but 'had to compete with bear baiting for his audience.' 'His plays' says Dr Watson, 'are full of legal jokes and elaborate legal scenes, he
makes puns on the forms of pawning property, parodies the Aedile’s Edict . . . shows a character framing the condition of a fraudulent sale in such a way that the buyer will have no remedy, correctly uses technical terms for aggravated theft (furtum manifestum) and so on.¹

From his analysis of the Roman legal mind he moves on to discuss the character of the earliest law — that of the Kings and the Twelve Tables. The regal period clearly reveals the Roman aptitude for law and one is struck incidentally with the similarity between the relationship, under Romulus, of the patron to his client as outlined by Dionysius, and that which existed in mediaeval English Law between the Feudal lord and his tenants. (This would surely indicate not a borrowing but similar social needs). But it is in the earliest codification — the Twelve Tables — that the true Roman genius first appears, and when Dr Watson points out at p. 14, that the apparent lack of completeness of the code is explained by the fact that like earlier codes of other countries it tends to deal with the less ordinary situation and takes the straight forward case for granted, one is again reminded of Professor Milsom’s comment in his Historical Foundations of the Common Law, that it is easy to interpret the written document, but it is what is left unsaid because it is taken for granted, that is often even more important.

Next the author examines the sources of law during both the Republic and the Empire, and in pointing out the literal distinction for the Romans between written and unwritten law, makes the significant point that the unimportance of Roman custom is indicative of the importance of their written law — first the statutes passed by the various assemblies of the people, and then later and more fundamentally important, the edicts of the magistrates, the urban praetor, the peregrine praetor and to a lesser extent the curule aediles. Here again one is struck by the parallel that can be drawn with early work of the English Chancellors as they built up their equitable jurisdiction.

When we come to the interpretation of such sources, however, the parallel ends. In the Anglo-American or Common Law system, interpretation is the hands of the judges deciding actual cases (unwritten law in the Anglo-American sense). In Rome it was the task of the jurists who considered both actual and imaginary cases

¹. Cf. Shakespeare and Dickens; see e.g. Sir William Holdsworth’s eminently readable Dickens as a Legal Historian, and J.L. Barton’s Shakespeare and the Law.
and their writings form another source of law.

Of these jurists, Gaius is perhaps the most famous, for it was he who was responsible for the standard text-book written around the middle of the second century A.D., and these Institutes were the model for Justinian's Institutes issued in 533 A.D. as a text-book for first year law students. (It is on these two texts incidentally that the author chiefly relies in his discussion of specific branches of the law).

The jurists continued to play an important role in the Empire but by then, as Dr Watson shows, they were skilfully controlled by the Emperors, and new sources of law developed - the decrees of the Senate, senatus consulta, and later, imperial constitutions, decrees of the Emperors themselves.

The author then goes on to discuss particular areas; family law, slavery, property, contracts, delicts, succession and the examples chosen in each chapter continue to illumine the characteristics of the whole legal system. Betrothal, marriage, divorce, dowry, adoption and guardianship are all seen as integral facts of Roman life and law, as is the enormous power placed in the hands of the Roman paterfamilias. The Romans' delight in classification is well demonstrated in the chapter on property law, many of their distinctions dating from as early as the first century B.C. As one might expect from his earlier writings, Dr Watson deals with the law of contract in some detail and makes the point that though Roman Law, unlike modern systems, had no general theory of contract, only a number of individual contracts, nevertheless this is an area in which Roman Law has been most influential.

Criminal law as such exerted little influence outside Rome and is not dealt with in the book though the four main delicts (the ones discussed by both Gaius and Justinian), which gave rise to civil actions on the part of the injured party and which would now be regarded primarily as crimes, are noted in Chapter VIII. They include theft, robbery with violence, damage to property and personal injury.

Succession, either under a will or on intestacy, is discussed in Chapter IX and what has been called by another scholar 'the precociously early appearance of the will' illustrates not only the Roman horror of intestacy but also the urgent need to carry on the family in order that the sacra should not fail to be performed.

Post classical law and the place of what is now referred to as Justinian's Corpus Iuris Civilis merits a chapter, as does the
subsequent reappearance of Roman Law 'in so many ways, at so many times and in so many places'. Its enduring nature is surely nowhere more vividly high-lighted than in the author's claim that the slavery provisions of the Louisiana Civil Code of 1824 and the earlier Digest of 1808 are pure Roman Law.

Foot notes in the text are kept to a minimum and are in the main references to the chief sources of our knowledge of Roman Law, Justinian's *Corpus Iuris* and Gaius' Institutes. A short appendix lists both the legal and non-legal texts (in particular Cicero and Plautus) which are considered to throw special light on the thesis the author seeks to develop, and the index is as one would expect — full and accurate. A Bibliography of selected general works in English is listed under text books, histories and general writing, and is a useful guide to those (and there should be many) who are stimulated to read more widely, especially as each title is followed by a lively and pertinent comment.

In writing this book, Dr Watson has performed a task which has long needed doing and his comment in the Bibliography on his own volumes as 'difficult reading' has no application to *The Law of the Ancient Romans*. It deserves the wide reading public he set out to attract, and followed by B. Nicholas' *Introduction to Roman Law*, should in this reviewer's opinion, be required preliminary reading for any Roman Law course or any course in Comparative Law based on the contrast between the Civil and Common Law systems.

*Isobel Matson*