ROMAN LAW

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Mechanisms of Development

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PREFACE

In the preparation of a teaching manual and desk book on the mechanisms involved in the development of the Roman law three elements have been deemed essential by the author. First, the substance of the volume comprises a selection of primary texts, in English translation. Second, a commentary presents the views of scholars, often conflicting, on the interpretation of these and related texts. Third, bibliographical references to the most recent discussion of the topics dealt with in these texts affords the reader the opportunity to pursue further study. Graduate students and scholars have aided in the assembling of a wide range of the primary materials and in the abstracting of the mass of secondary literature, and I thank them for their help. Special note should be made of the gracious assistance given by the late Professor Adolf Berger and, in earlier years, by Mr. C. V. Abeles, by the present Professor of Ancient History at Cambridge University, Professor M. I. Finley, and by his wife, Mary Finley.

The author is perhaps even more indebted to the scores of scholars from whose works the ideas have been derived which are set forth in the commentary to the texts. It is sincerely hoped that the views of those concerned have been accurately presented.

The preparation and publication of the volume has extended over a number of years, so that necessarily a presentation of the most recent points of view on many subjects is absent from the commentary. However, it is believed that the bibliographical references will direct the reader to the recent discussions of the topics dealt with.

The author wishes to express his thanks to the Council of Research in the Social Sciences of Columbia University for the grant of funds to assist in the preparation as well as in the publication of the volume. He further sincerely appreciates the generosity of the Rockefeller Foundation in affording the opportunity of preparing a draft of the early chapters of the book at the Villa Bellagio in the spring of 1970.

I am especially grateful for the sacrifices made by my wife, who freely gave up summer travel over a number of years so that I might engage in the writing of the work.

This volume marks the culmination of years of teaching at Columbia University School of Law, and in the last analysis, it is due to the opportunity afforded me by the Deans and Faculty of that institution to specialize in the field of Roman law and to devote the greater portion of my teaching and research to that field. I offer this volume in appreciation to Deans Young B. Smith, William C. Warren and Michael I. Sovern, and to the members of the Faculty, past and present, in the years 1928 to 1971.

Columbia University
New York City
January 23, 1977

A. Arthur Schiller

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Archaic and Pre-Classical Law

BOOK III

Classical Law

LISTS OF ABBREVIATIONS

I. Sources

A. Legal[1]

Bas. = Basilicorum libri LX
C. = Codex Iustinianus
Coll. = Collatio legum Mosaicarum et Romanarum
C. Th. = Codex Theodosianus
D. = Digesta Iustiniani
Frag. Dos. = Fragmentum Dositheanum
Fr. Vat. = Fragmenta Vaticana
G. = Gaius, Institutionum
Inst. = Iustinianus, Institutiones
Nov. = Iustinianus, Novellae leges
P. = Paulus, Sententiae ad filium
Ulp. = Ulpianus, Regularum epitome
XII Tab. = Lex XII tabularum

B. Inscriptions, Papyri and Collections of Sources

BGU = Ägyptische Urkunden aus den Staatlichen Museen zu Berlin, Griechische Urkunden (1895–)
Bremer, *Iurisprudentiae* = F. P. Bremer, Iurisprudentiae antehadrianae quae supersunt. 2 vols. in 3 (1896–1901)
Bruns = C. G. Bruns, Fontes iuris romani antiqui, 7th ed. by O. Gradenwitz (1909, repr. 1956)
Cavenaile, *CPL* = R. Cavenaile, Corpus Papyrorum Latinarum (1958)
CIG = A. Boekh, Corpus Inscriptionum Graecarum (1828–1877)
CIL = Corpus Inscriptionum Latinarum (1863–)
Collectio = Collectio librorum iuris anteiustiniani, ed. P. Krüger, T. Mommsen, G. Studemund. 3 vols. (1878–1927)
FIRA = Fontes iuris romani antejustiniani, ed. S. Riccobono et al. 3 vols. (2d ed., 1940–1969)

1. For editions of these works, see chap. II.

Girard, *Textes* = P. F. Girard, Textes de droit romain (6th/7th ed., 1937–1967)

Haenel, *Corpus legum* = Corpus legum ab imperatoribus romanis ante Iustinianum latarum, quae extra constitutionum codices supersunt, ed. G. F. Haenel (1857–1860, repr. 1965)

IG = Inscriptiones Graecae (1873–)

ILS = H. Dessau, Inscriptiones Latinae Selectae (1892–1916)

McCrum – Woodhead, *Documents* = M. McCrum – A. G. Woodhead, Select Documents of the Principate of the Flavian Emperors, A.D. 68–96 (1961)

M. Chr. = Grundzüge und Chrestomathie der Papyrusurkunde, by L. Mitteis – U. Wilcken, II.2: Juristischer Teil, Chrestomathie, by L. Mitteis (1912)

Meyer, *Jur. Papyri* = P. M. Meyer, Juristische Papyri. Erklärung von Urkunden zur Einführung in die juristische Papyruskunde (1920)

P. Cairo Preis. = Griechische Urkunden des Ägyptischen Museums zu Kairo, ed. F. Preisigke (1911)

P. Col. 123 = see Westermann – Schiller, Apokrimata, List II, infra

P. Gen. = Les papyrus de Genève, ed. J. Nicole (1906)

P. Lond. = Greek Papyri in the British Museum, ed. F. G. Kenyon, H. I. Bell et al. (1893–)

P. Oxy. = The Oxyrhynchus Papyri, ed. B. P. Grenfell, A. S. Hunt et al., publ. by the Egypt Exploration Society (1898–)

PSI = Pubblicazione della Società Italiana per la ricerca dei Papiri greci e latini in Egitto, Papiri greci e latini, ed. G. Vitelli, M. Norsa et al. (1912–)

P. Strass. = Griechische Papyrus der kaiserlichen Universitäts- und Landesbibliothek zu Strassburg, ed. F. Preisigke (1911)

SB = Sammelbuch griechischer Urkunden aus Ägypten, ed. F. Preisigke, F. Bilabel, E. Kiessling (1913–)

Seckel – Kübler, *Iurisprudentiae* = E. Seckel – B. Kübler, Iurisprudentiae anteiustinianae reliquias in usum maxime academicum compositas a Ph. Eduardo Huschke, 2 vols. in 3 (6th ed., 1908–1927)

SIG = W. Dittenberger, Sylloge Inscriptionum Graecarum (3d ed., 1915–1924)

C. Non-legal

Note: Greek and Latin authors, and their works, are abbreviated in conformity with the Tables of Abbreviations in H. G. Liddell – R. Scott – H. S. Jones, A Greek-English Lexicon, and in Harper's Latin Dictionary.

II. Periodicals

Abh. Berlin = Abhandlungen der (Königlichen Preussischen) Deutschen Akademie der Wissenschaften zu Berlin, Philosophisch-historische Klasse (Berlin)

Abh. Göttingen = Abhandlungen der Gesellschaft (Akademie) der Wissenschaften zu Göttingen, Philologisch-historische Klasse (Göttingen)

Abh. Leipzig = Abhandlungen der philologisch-historischen Klasse der Sächsischen Akademie der Wissenschaften (Leipzig)

Abh. München = Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-historische Abteilung (München)

Abh. rechtswiss. Grundl. = Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung, Münchener Universitätsschriften, Juristische Fakultät (Berlin)

Acta Acad. Comp. = Acta Academiae Universalis Iurisprudentiae Comparativae (Berlin/Paris/Rome)

Acta Hungarica = Acta Antiqua Academiae Scientarum Hungaricae (Budapest)

Acta Jurid. = Acta Juridica (Cape Town)

Aegyptus = Aegyptus. Rivista italiana di egittologia e di papirologia (Milano)

AG = Archivio Giuridico 'Filippo Serafini' (Bologna/Pisa/Modena)

AHDE = Anuario de historia de derecho espanol (Madrid)

AHDO = Archives d'histoire de droit oriental (Brussels)

AJP = American Journal of Philology (Baltimore)

Albany L. J. = Albany Law Journal (Albany)

Almanach Wien = Almanach der Akademie der Wissenschaften in Wien, Philosophisch-historische Klasse (Vienna)

Amer. Hist. Rev. = American Historical Review (New York)

Ann. Bari = Annali della Facoltà di Giurisprudenza della Università di Bari (Bari)

Ann. Cagliari = Annali della Facoltà di Lettere e Filosofia della Università di Cagliari (Rome/Cagliari)

Ann. Camerino = Annali della Università di Camerino, Sezione giuridica (Rome/Milan/Naples)

Ann. Catania = Annali del Seminario giuridico, Università di Catania (Naples)

Ann. dir. comp. = Annuario di diritto comparato e di studi legislativi (Rome)

Ann. Ferrara = Annali della Università di Ferrara (Ferrara)

Ann. Istanbul = Annales de la Faculté de Droit d'Istanbul (Istanbul)

Ann. Macerata = Annali della Università di Macerata per cura della Facoltà Giuridica (Macerata/Milano)

Ann. Messina = Annali dell'Istituto di scienze giuridiche, economiche, politiche e sociali della Università di Messina (Messina)

Ann. Palermo = Annali del Seminario giuridico della Università di Palermo (Rome/Palermo)

Ann. Perugia = Annali della Facoltà di Giurisprudenza dell'Università di Perugia (Perugia/Padua)

Ann. Saraviensis = Annales Universitatis Saraviensis. Rechts- und Wirtschaftswissenschaften (Saarbrücken)

Ann. Sem. Bari = Annali del Seminario giuridico-economico, Università di Bari (Bari)

Ann. Toulouse = Annales de la Faculté de Droit et des Sciences Économiques de Toulouse, Université de Toulouse (Toulouse)

Ann. Triestini = Annali Triestini a cura della Università di Trieste (Trieste)

Antiq. class. = L'Antiquité classique (Brussels/Louvain/etc.)

Anz. f. Altertumswiss. = Anzeiger für die Altertumswissenschaft (Vienna)

Anz. Wien = Anzeiger der philosophisch-historischen Klasse der Österreichischen Akademie der Wissenschaften (Vienna)

Arch. civ. Praxis = Archiv für die civilistische Praxis (Heidelberg)

Arch. dr. prive = Archives de droit privé (Athens)

Arch. kath. Kirchenrecht = Archiv für katholisches Kirchenrecht (Mainz)

Arch. lat. Lexik. = Archiv für die lateinische Lexikographie und Grammatik (Munich/Leipzig)

Arch. Pap. = Archiv für Papyrusforschung (Leipzig/Berlin)

Arch. penale = Archivio penale (Rome)

Arch. R. Soz. Phil. = Archiv für Rechts- und Sozialphilosophie (Berlin)

Arch. RW Phil. = Archiv für Rechts- und Wirtschaftsphilosophie (Berlin/Leipzig)

Arch. stor. Pugliese = Archivio storico Pugliese (Bari)

Arch. Urk. = Archiv für Urkundenforschung (Leipzig)

A/RIDA = Archives d'histoire de droit oriental/Revue internationale des droits de l'antiquité (Brussels)

ASD = Annali di storia del diritto (Milan)

Atene e Roma = Atene e Roma. Rassegna trimestrale dell'Associazione italiana di cultura classica (Florence)

Athenaeum = Athenaeum. Studi periodici di letteratura e storia dell'antichità (Pavia)

Atti Napoli = Atti dell'Accademia di scienze morali e politiche di Napoli (Naples)

Atti Padova = Atti dell'Accademia di scienze, lettere e arti in Padova (Padua)

Atti Torino = Atti dell'Accademia delle scienze di Torino (Turin)

Atti Veneto = Atti dell'Istituto Veneto di scienze, lettere ed arti (Venice)

BASP = Bulletin of the American Society of Papyrologists (New Haven/Toronto/Urbana, Ill.)

Ber. Leipzig = Bericht über die Verhandlungen der philologisch-historischen Classe der Sächsischen Gesellschaft der Wissenschaften zu Leipzig (Leipzig)

BIDR = Bullettino dell'Istituto di Diritto romano 'Vittorio Scialoja' (Rome)

BIFAO = Bulletin de l'Institut francais d'archéologie orientale (Cairo/Paris)

Bonn. Hist. Aug. Colloq. = Bonner Historia Augusta Colloquium [=Antiquitas, Reihe 4, Band 3 (1968)–](Bonn)

Boston Univ. L. Rev. = Boston University Law Review (Boston)

Bull. Inst. d'Égypte = Bulletin de l'Institut d'Égypte (Alexandria/Cairo)

Butterworths S.A.L. Rev. = Butterworths South African Law Review (Durban)

Byzantion = Byzantion. Revue internationale des études byzantines (Paris/Brussels)

Byz. Neugriech. Jahrb. = Byzantinisch-Neugriechische Jahrbücher (Berlin/Athens)

Byz. Z = Byzantinische Zeitschrift (Leipzig/Munich)

Cambridge L. J. = Cambridge Law Journal (Cambridge)

Chr. d'Eg. = Chronique d'Égypte. Bulletin périodique de la Fondation égyptologique Reine Elisabeth (Brussels)

Cir. Giur. = Università di Palermo, Facoltà di Giurisprudenza. Il Circolo giuridico 'L. Sampolo' (Palermo)

Class. Philol. = Classical Philology (Chicago)

Class. Rev. = The Classical Review (London)

Columbia L. Rev. = Columbia Law Review (New York)

CR Acad. Inscrip. = Comptes rendus de l'Académie des Inscriptions et Belles-Lettres (Paris)

CW = Classical Weekly (New York)

Dir. e Giuris. = Diritto e Giurisprudenza (Naples)

Drerup's Studien = Studien zur Geschichte und Kultur des Altertums (Paderborn)

Eng. Hist. Rev. = English Historical Review (London)

Eos = Eos. Commentarii Societatis Philologae Polonorum (Warsaw)

Epigrafica = Epigrafica. Rivista italiana di epigrafia (Milan)

Études de Papyr. = Études de Papyrologie (Cairo)

Filangieri = Il Filangieri. Rivista giuridica, dottrina e pratica (Rome)

Foro ital. = Il Foro italiano (Rome)

Freib. rechtsgesch. Abh. = Freiburger rechtsgeschichtliche Abhandlungen (Berlin)

Freib. wissensch. Gesellsch. = Freiburger wissenschaftliche Gesellschaft (Freiburg i. Br.)

Georgetown L. J. = Georgetown Law Journal (Washington)

Giur. ital. = Giurisprudenza italiana (Turin)

Gnomon = Gnomon. Kritische Zeitschrift für die gesamte klassische Altertumswissenschaft (Berlin/Munich)

Grünh. Z = Zeitschrift für das privat- und öffentliche Recht der Gegenwart (Vienna)

Heidelberger Rechtswissensch. Abh. = Heidelberger Rechtswissenschaftliche Abhandlungen, hgg. von der Juristischen Fakultät (Heidelberg)

Hermes = Hermes. Zeitschrift für klassische Philologie (Berlin)

Hesperia = Hesperia. Journal of the American School of Classical Studies at Athens (Baltimore)

Historia = Historia. Zeitschrift für alte Geschichte (Baden-Baden/Wiesbaden)

Hist. Zeitschr. = Historische Zeitschrift (Munich/Berlin)

Index = Index. Quaderni camerti di studi romanistici (Naples)

Ir. Jur. = The Irish Jurist (Dublin)

Iura = IVRA. Rivista internazionale di diritto romano e antico (Naples)

Jahrb. AC = Jahrbuch für Antike und Christentum (Münster)

Jahrb. Öster. Byz. Ges. = Jahrbuch der Österreichischen Byzantinischen Gesellschaft (Vienna/Graz)

JEA = Journal of Egyptian Archeology (London)

Jher. Jb. = Jherings Jahrbücher für die Dogmatik des bürgerlichen Rechts (Jena)

J. Jew. Stud. = Journal of Jewish Studies (London)

JJP = Journal of Juristic Papyrology (New York/Warsaw)

J. Leg. Educ. = Journal of Legal Education (St. Paul)

JRS = Journal of Roman Studies (London)

JSPTL = Journal of the Society of Public Teachers of Law (London)

Jurid. Rev. = The Juridical Review (Edinburgh)

Jus = JUS. Rivista di scienze giuridiche (Milan)

Klio = Klio. Beiträge zur alten Geschichte (Leipzig)

Krit. Überschau = Kritische Überschau der deutschen Gesetzgebung und Rechtswissenschaft (Munich)

Krit. Vjschr. = Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft (Munich)

Labeo = Labeo. Rassegna di diritto romano (Naples)

Latomus = Latomus. Revue des études latines (Brussels)

L'Égypte contemporaine = L'Égypte contemporaine. Revue de la Société Royale d'économie politique, de statistique et de législation (Cairo)

L. Libr. J. = Law Library Journal (New York)

Louisiana L. Rev. = Louisiana Law Review (Baton Rouge)

LQR = The Law Quarterly Review (London)

Mél. d'arch. et d'hist. = Mélanges d'archéologie et d'histoire de l'École française de Rome (Paris/Rome)

Mém. Acad. Inscrip. = Mémoires de l'Institut de France. Académie des Inscriptions et Belles-Lettres (Paris)

Mem. Accad. Ital. = Memorie dell'Accademia d'Italia (Rome)

Mem. Accad. Lincei = Memorie dell'Accademia Nazionale dei Lincei, Classe di scienze morali, storiche e filologiche (Rome)

Mem. Bologna = Memorie dell'Accademia di scienze e lettere dell'Istituto di Bologna, Classe di scienze morali (Bologna)

Mem. div. savants Acad. Inscrip. = Mémoires présentés par divers savants à l'Académie des Inscriptions et Belles-Lettres de l'Institut de France (Paris)

Mem. Modena = Memorie dell'Accademia di scienze, lettere ed arti di Modena (Modena)

Mnemosyne = Mnemosyne. Bibliotheca philologica Batava (Leiden)

Münch. Beitr. = Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte (Munich)

Mus. Helv. = Museum Helveticum. Schweizerische Zeitschrift für klassische Altertumswissenschaft (Basel)

Notizie Scavi = Notizie degli scavi di antichità communicati all'Accademia Nazionale dei Lincei (Rome)

NRH = Nouvelle revue historique de droit français et étranger (Paris)

Oregon L. Rev. = Oregon Law Review (Eugene)

Öster. Z. öffent. R = Österreichische Zeitschrift für öffentliches Recht (Vienna)

Parola del passato = La Parola del passato. Rivista di studi classici (Naples)

Philologus = Philologus. Zeitschrift für das klassische Altertum (Leipzig)

Proc. Am. Philos. Soc. = Proceedings of the American Philosophical Society (Philadelphia)

PSQ = Political Science Quarterly (New York)

Quaderno Lincei = Quaderno, Accademia Nazionale dei Lincei (Rome)

RADR = Revista de la Societa Argentina de Derecho romano (Cordoba)

Rechtstheorie = Rechtstheorie. Zeitschrift für Logik, Methodenlehre, Kybernetik und Soziologie des Rechts (Berlin)

Rend. Bologna = Rendiconti dell'Accademia delle scienze dell'Istituto di Bologna, Classe di scienze morali (Bologna)

Rend. Lincei = Rendiconti dell'Accademia Nazionale dei Lincei, Classe di scienze morali, storiche e filologiche (Rome)

Rend. Lombardo = Rendiconti dell'Istituto Lombardo di scienze e lettere (Milan)

Rev. Clasica = Revista Clasica (Bucharest)

Rev. de philol. = Revue de philologie, de littérature et d'histoire ancienne (Paris)

Rev. Et. Gr. = Revue des études grecques (Paris)

Rev. Et. Juives = Revue des études juives (Paris)

Rev. Et. Lat. = Revue des études latines (Paris)

Rev. Gen. = Revue générale du droit, de la législation et de la jurisprudence en France et à l'étranger (Paris)

revue = revue, International Organization for Ancient Languages Analysis by Computer (Brussels)

RH = Revue historique de droit francais et étranger (Paris)

Rhein. Mus. = Rheinisches Museum für Philologie (Frankfurt)

Rhein. Z = Rheinische Zeitschrift für Zivil- und Prozessrecht (Mannheim/Leipzig)

RIDA = Revue internationale des droits de l'antiquité (Brussels)

RISG = Rivista italiana per le scienze giuridiche (Turin/Milan)

Riv. dir. civ. = Rivista di diritto civile (Milan)

Riv. dir. comm. = Rivista di diritto commerciale (Milan)

Riv. dir. proc. = Rivista di diritto procesuale (Padua)

Riv. filol. = Rivista di filologia e d'istruzione classica (Turin)

Riv. Inter. di Filos. d Dir. = Rivista Internazionale di Filosofia di Diritto (Genoa/Rome)

Riv. ital. di sociol. = Rivista italiana di sociologia (Rome)

Romanitas = Romanitas. Revista de cultura romana (Rio de Janeiro)

RSDI = Rivista di storia del diritto italiano (Rome/Milan)

S.A.L.J. = South African Law Journal (Grahamstown)

SDHI = Studia et Documenta Historiae et Iuris (Rome)

Seminar = Seminar. Extraordinary Number of The Jurist (Lancaster, Pa.)

Sitzb. Berlin = Sitzungsberichte der Preussischen Akademie der Wissenschaften zu Berlin (Berlin)

Sitzb. Frankfurt = Sitzungsberichte der wissenschaftlichen Gesellschaft an der J. W. Goethe-Universität Frankfurt/Main (Frankfurt)

Sitzb. Heidelberg = Sitzungsberichte der Heidelberger Akademie der Wissenschaften, philosophisch-historische Klasse (Heidelberg)

Sitzb. München = Sitzungsberichte der Bayerischen Akademie der Wissenschaften zu München, philosophisch-historische Abteilung (Munich)

Sitzb. Wien = Sitzungsberichte der Akademie der Wissenschaften in Wien, philosophisch-historische Klasse (Vienna)

St. Cagliari = Studi economico-giuridici, pubbl. per cura della Facoltà di Giurisprudenza, Università di Cagliari (Cagliari/Rome/Florence/Padua)

St. Louis L. Rev. = St. Louis Law Review (St. Louis)

St. Parmensi = Studi Parmensi. Università di Parma, Istituto Giuridico (Milan)

St. Pavia = Studi nelle scienze giuridiche e sociali, Istituto di esercitazioni, Facoltà di Giurisprudenza, Università di Pavia (Pavia)

St. Sassaresi = Studi Sassaresi, Università di Sassari (Sassari)

St. Senesi = Studi Senesi (Siena)

St. Urbinati = Studi Urbinati di scienze giuridiche ed economiche (Milan)

Syria = Syria. Revue d'art oriental et d'archéologie (Paris)

SZ = Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung (Weimar)

SZ Germ = Idem, Germanistische Abteilung (Weimar)

SZ Kan. = Idem, Kanonistische Abteilung (Weimar)

TR = Tijdschrift voor Rechtsgeschiedenis/Revue d'histoire du droit/Legal History Review (Haarlem/The Hague)

Traditio = Traditio. Studies in Ancient and Medieval History, Thought and Religion (New York)

Trans. Am. Philos. Soc. = Transactions of the American Philosophical Society (Philadelphia)

Tulane L. Rev. = Tulane Law Review (New Orleans)

U. Chicago L. Rev. = University of Chicago Law Review (Chicago)

U. Toronto L. J. = University of Toronto Law Journal (Toronto)

U. Queensland L. J. = University of Queensland Law Journal (Brisbane)

Virginia L. Rev. = Virginia Law Review (Richmond)

Yale L. J. = Yale Law Journal (New Haven)

Z. gesch. RW = Zeitschrift für geschichtliche Rechtswissenschaft (Berlin)

ZPE = Zeischrift für Papyrologie und Epigraphik (Bonn)

ZRG = Zeitschrift für Rechtsgeschichte (Weimar)

Z. vergl. RW = Zeitschrift für vergleichende Rechtswissenschaft (Stuttgart)

III. Treatises, Monographs, Collected Works, Studies in Honor, etc.

Note: The abbreviation of the title is indicated by the words (or parts of words) in *italics*, generally the first noun, or noun and adjective of the title.

Abbott, F. F. – A. C. Johnson, Municipal *Administration* in the Roman Empire (Oxford 1926, repr. 1968)

Acta Divi Augusti, pars prior, ed. S. Riccobono, publ. by Regia Academia Italica (Rome 1945)

Actes du *V^e Congrès* international de *Papyr*ologie, 30 Aout – 3 Septembre 1937, publ. by Fondation Egypt. Reine Elisabeth (Brussels 1938)

Albertario, E. *Introduzione* storica allo studio del diritto romano giustinianeo, I (Milan 1935)

Albertario, E. *Studi* di diritto romano. 6 vols. (Milan 1933–53)

Alibrandi, I. *Opere* giuridiche e storiche (Rome 1896)

Allen, C. K. *Law* in the Making (6th ed., Oxford 1958)

Alvarez Suarez, U. Curso de *Derecho romano*, I (2d ed., Madrid 1955)

Alvarez Suarez, U. *Horizonte* actual del derecho romano (Madrid 1944)

Amelotti, M. La *prescrizione* delle azioni in diritto romano [=Fond. Castelli, 24] (Milan 1958)

Amirante, L. Il *giuramento* prestato prima della litis contestatio nelle legis actiones e nelle formulae [= Pubbl. Fac. Giur. Napoli, 18] (Naples 1954)

Antologia giuridica romanistica ed antiquaria [= Univ. di Milano, Pubbl. Fac. di Giuris., S. II, 7] (Milan 1968).

Arangio-Ruiz, V. *Rariora* (Rome 1946)

Arangio-Ruiz, V. *Storia* del diritto romano (7th ed., Naples 1957)

Arangio-Ruiz, V. – A. Guarino, *Breviarium* iuris romani (5th ed., Milan 1974)

Atti del *cong*resso internazionale di diritto romano (*Bologna* e Roma XVII – XXVII Aprile MCMXXXIII): Bologna. 2 vols. (Pavia 1934)

Atti del *cong*resso internazionale di diritto romano (Bologna e *Roma* XVII – XXVII Aprile MCMXXXIII): Roma. 2 vols. (Pavia 1934)

Atti del *Cong*resso internazionale di diritto romano e di storia del diritto, *Verona*, 27–28–29–IX–1948. 4 vols. (Milan 1951–53)

Augustus. Studi in occasione del bimillenario augusteo, studi di V. Arangio-Ruiz, P. De Francisci, S. Riccobono, et al. (Rome 1938)

Baviera, G. *Scritti* giuridici, I: Diritto romano (Palermo 1909)

Baviera, G. Le due *scuole* dei giureconsulti romani (Florence 1898, repr. 1971)

Bellocci, N. La *genesi* della 'litis contestatio' nel procedimento formulare (Naples 1965)

Bertolini, C. Il *Processo* civile [=Appunti didattici di diritto romano, ser. II] 2 vols. (Turin 1913–14)

Beseler, G. *Beiträge* zur Kritik der römischen Rechtsquellen. 5 vols. (Tübingen 1910–31, repr. 1970)

Betti, E. *Diritto romano*, I: Parte generale (Padua 1935)

Betti, E. *Istituzioni* di diritto romano, I (2d ed., Padua 1942); II.1 (Padua 1962)

Biondi, B. *Istituzioni* di diritto romano (4th ed., Milan 1965)

Biondi, B. *Prospettive* romanistiche [=Pubbl. d. Univ. Cattol. d. Sacro Cuore, S. II, 37] (Milan 1933)

Biondi, B. *Scritti* giuridici. 4 vols. (Milan 1965)

Biscardi, A. Lezioni sul *processo* romano antico e classico (Turin 1968)

Bleicken, J. *Senatsgericht* und Kaisergericht. Eine Studie zur Entwicklung des Prozessrechtes im frühen Prinzipat [=Abh. Göttingen, 3. Folge, 53] (Göttingen 1962)

Bolla, S. von. Aus römischen und bürgerlichen *Erbrecht* (Vienna 1950)

Bonfante, P. *Corso* di diritto romano. 5 vols. (corrected repr., Milan 1963–74)

Bonfante, P. *Scritti* giuridici varii. 4 vols. (Rome 1926)

Bonfante, P. *Storia* del diritto romano. 2 vols. (4th ed., Rome 1959)

Bonini, R. I '*libri* de cognitionibus' di Callistrato, I [=Sem. giur. d. Univ. di Bologna, 38] (Milan 1964)

Bove, L. La *consuetudine* in diritto romano, I: Della repubblica all'eta dei Severi [=Pubbl. d. Fac. Giur. dell'Univ. di Napoli, 101] (Naples 1971)

Boyé, A. J. La *denuntiatio* introductive d'instance sous le Principat (Bordeaux 1922)

Bremer, F. P. Die *Rechtslehrer* und Rechtsschulen im römischen Kaiserreich (Berlin 1868, repr. 1968)

Bretone, M. *Tecniche* e ideologie dei giuristi romani (Naples 1971)

Brie, S. Die Lehre vom *Gewohnheitsrecht*. Eine historisch-dogmatische Untersuchung, I: Geschichtliche Grundlegung (Breslau 1899)

Brissonius, B. *De verb*orum quae ad ius civile pertinent *signi*ficatione, ed. I. G. Heineccius (Halle-Magdeburg 1743)

Broggini, G. *Coniectanea*. Studi di diritto romano (Milan 1966)

Broggini, G. *Iudex* arbiterve. Prolegomena zum Officium des römischen Privatrichters [Forsch. z. röm. Recht, 10] (Cologne/Graz 1957)

Bruck, E. Über *römi*sches *Recht* im Rahmen der Kulturgeschichte (Berlin/Göttingen/Heidelberg 1954)

Bruns C. G. – O. Lenel, *Geschichte* und Quellen des römischen Rechts, unter Benutzung der Bearbeitung von A. Pernice, neu bearbeitet [=Holtzendorff's Enzyklopädie, I (7th ed., 1915) 303–97.

Buckland, W. W. *Equity* in Roman Law (London 1911)

Buckland, W. W. A *Text-Book* of Roman Law from Augustus to Justinian (3d ed., Cambridge 1964)

Buckland, W. W. – McNair, A. D. *Roman Law* and Common Law. A Comparison in Outline (2d ed., Cambridge 1952)

Carcaterra, A. Le *definizioni* dei giuristi romani. Metodo, mezzi e fini (Naples 1966)

Carcaterra, A. *Iustitia* nelle fonti e nella storia del diritto romano (Bari 1949)

Chiazzese, L. *Confronti* testuali. Contributi alla dottrina delle interpolazioni giustinianee [=Ann. Palermo 16 (1931)]

Chiazzese, L. *Introduzione* allo studio del diritto romano, I (3rd ed., Palermo 1948)

Clark, E. C. *History* of Roman Private Law. 3 vols. in 4 (Cambridge 1906–19)

Coles, R. A. *Reports* of Proceedings in Papyri (Brussels 1966)

Conferenze per il XIV centenario delle *Pandette* 15 dicembre 530 – 15 dicembre 1930 [=Pubbl. d. Univ. Cattol. del Sacro Cuore, S. II, 33] (Milan 1931)

Conferenze romanistiche, ed. C. A. Maschi, publ. by Univ. d. Studi di Trieste, Fac. di Giuris., Ist. di dir. rom. e di storia d. dir. (Milan 1960)

Costa, E. *Cicerone* giureconsulto, nuova edizione riveduta e ampliata dell'autore e in parte postuma. 2 vols. (Bologna 1927, repr. 1964)

Costa, E. *Storia delle fonti* del diritto romano (Milan/Turin/Rome 1909)

La *Critica del testo*. Atti del secondo Congresso internazionale della Società italiana di storia del diritto. 2 vols. (Florence 1971)

Crook, J. A. *Consilium* principis. Imperial Councils and Counsellors from Augustus to Diocletian. (Cambridge 1955)

Crook, J. A. *Law* and Life of Rome (London 1967)

Cuq, E. Les *institutions* juridiques des Romains. 2 vols. (Paris 1891–1902)

Cuq, E. *Manuel* des institutions juridiques des Romains (2d ed., Paris 1928)

Daube, D. *Forms* of Roman Legislation (Oxford 1956)

Daube, D. *Roman Law*. Linguistic, Social and Philosophical Aspects (Edinburgh 1969)

Daube Noster. Essays in Legal History for David Daube, ed. A. Watson (Edinburgh/London 1974)

Dawson, J. P. The *Oracles* of the Law (Ann Arbor 1968)

De Francisci, P. *Arcana* imperii. 3 vols. in 4 (Milan 1947–48, repr. 1970)

De Francisci, P. *Primordia* civitatis [=Pontif. Inst. utrius. iuris, 2] (Rome 1959)

De Francisci, P. *Storia* del diritto romano. 3 vols. (2d ed., Milan 1938–40)

De Francisci, P. Il *transferimento* della proprietà (Padua 1924)

Dell'Oro, A. '*Mandata*' e 'litterae'. Contributo allo studio degli atti giuridici del 'princeps' [=Pubbl. d. Fac. di Giuris. d. Univ. di Modena, 100–01] (Bologna 1960)

De Martino, F. La *giurisdizione* del diritto romano [=Studi di dir. procesuale, 8] (Padua 1937)

De Martino, F. *Storia* della costituzione romana, vols. I–IV.2 (2d ed., Naples 1972–75)

De Robertis, F. M. Il *fenomeno associativo* nel mondo romano dai collegi della repubblica alle corporazioni del basso impero (Naples 1955)

d'Ippolito, F. *Ideologia* e diritto in Gaio Cassio Longino [=Pubbl. d. Fac. Giur. della'Univ. di Napoli, 122] (Naples 1969)

Dirksen, H. E. *Hinterlassene Schriften* zur Kritik und Auslegung der Quellen römischer Rechtsgeschichte und Altertumskunde, hgg. von F. D. Sanio. 2 vols. (Leipzig 1871)

d'Ors, A. *Derecho privado romano* (2d ed., Pamplona 1973)

d'Ors, A. *Presupuestos* criticos para el estudio del derecho romano (Salamanca 1943)

Dulckeit, G. – F. Schwarz, Römische *Rechtsgeschichte*. Ein Studienbuch (5th ed., Munich 1970)

Ebrard, F. Die *Digestenfragmente* ad formulam hypothecariam und die Hypothekarezeption (Leipzig 1917)

Ehrlich, E. *Beiträge* zur Theorie der Rechtsquellen, I (Berlin 1902)

Ehrlich, E. Fundamental *Principles* of the Sociology of Law, trans. by W. L. Moll (Cambridge, Mass. 1936)

Eisele, F. *Beiträge* zur römischen Rechtsgeschichte (Freiburg/Leipzig 1896, repr. 1972)

Eranion in honorem G. S. *Maridakis*. 3 vols. (Athens 1963–64)

Essays in Legal History read before the International Congress of Historical Studies held in *London* in 1913, ed. P. Vinogradoff (London 1913)

Essays in Honor of C. Bradford *Welles* [=Amer. Studies in Papyr., I] (New Haven 1966)

Études d'histoire juridique offertes à Paul Frédéric *Girard* sur ses élèves. 2 vols. (Paris 1913)

Ferrini, C. *Opere*, ed. by various authors. 5 vols. (Milan 1929–30)

Festgabe für Georg *Beseler* zum VI. Januar MDCCCLXXXV. Juristische Abhandlungen (Berlin 1885)

Festgabe für Dr. Karl *Güterbock* zur achtzigsten Wiederkehr seines Geburtstages dargebracht (Berlin 1910)

Festgabe zum 70. Geburtstag von Max *Gutzwiller*. Ius et lex (Basel 1959)

Festgaben für August Wilhelm *Heffter* zum III. August MDCCCLXXIII (Berlin 1873)

Festgabe für Arnold *Herdlitczka* zu seinem 75. Geburtstag dargebracht (Munich/Salzburg 1972)

Festgabe für Professor Dr. Adolf *Leschnitzer*. Der Friede, Idee und Verwirklichung/The Search for Peace (Heidelberg 1961)

Festgabe für Ulrich *von Lübtow* zum 70. Geburtstag am 21. August 1970. Sein und Werden im Recht (Berlin 1970)

Festgabe zum 70. Geburtstag von August *Simonius*. Aequitas und bona fides (Basel 1955)

Festgabe der Rechts- und Staatswissenschaftlichen Fakultät der Universität *Zürich* (Zürich 1928)

Festschrift für Wilhelm *Felgentraeger* zum 70. Geburtstag (Göttingen 1969)

Festschrift Guido *Kisch*. Rechtshistorische Forschungen anlässlich des 60. Geburtstages dargebracht (Stuttgart 1955)

Festschrift Paul *Koschaker* zum 60. Geburtstag überreicht. 3 vols. (Weimar 1939)

Festschrift für Heinrich *Lehmann* zum 80. Geburtstag. 2 vols. (Berlin 1956)

Festschrift für Otto *Lenel* zum fünfzigjährigen Doctorjubiläum am 16. Dezember 1921 überreicht von der Rechts- und Staatswissenschaftlichen Fakultät der Universität Freiburg i. Br. (Leipzig 1921)

Festschrift Hans *Lewald*. Bei Vollendung das vierzigsten Amtsjahres als ordentlicher Professor im Oktober überreicht (Basel 1953)

Festschrift Oertel see *Studien Oertel*

Festschrift für Ernst *Rabel*, Band II: Geschichte der antiken Rechte und allgemeine Rechtslehre (Tübingen 1954)

Festschrift Fritz *Schulz*. 2 vols. (Weimar 1951)

Festschrift für Erwin *Seidl* zum 70. Geburtstag (Cologne 1975)

Festschrift Artur *Steinwenter* zum 70. Geburtstag [=Grazer Rechts- und Staatswiss. Studien, 3] (Graz/Cologne 1958)

Festschrift für Leopold *Wenger* zu seinem 70. Geburtstag [=Münch. Beitr., 34–35] 2 vols. (Munich 1944–45)

Fitting, H. *Alter* und Folge der Schriften römischer Juristen von Hadrian bis Alexander (2d ed., Tübingen 1908, repr. 1965)

Flores legum H. J. *Scheltema* oblati antecessori Groningano (Groningen 1971)

Flückiger, F. *Geschichte* des Naturrechtes, I: Altertum und Frühmittelalter (Zürich 1954)

Frezza, P. Corso di *storia* del diritto romano (3d ed., Rome 1974)

Gaio nel suo tempo. Atti del simposio romanistico (Naples 1966)

Gallo, F. *Interpretazione* e formazione consuetudinaria del diritto. Lezioni di diritto romano (Turin 1971)

Garcia Garrido, M. J. *Casuismo* y Jurisprudencia Romana (Madrid 1973)

Gaudemet, J. *Institutions* de l'antiquité (Paris 1967)

Gedächtnisschrift für Rolf *Dietz* (Munich 1974)

Gedächtnisschrift H. *Peters*, ed. H. Conrad et al. (Berlin/New York 1967)

Gedächtnisschrift für Rudolf *Schmidt*. Aktuelle Fragen aus modernem Recht und Rechtsgeschichte (Berlin 1966)

Gedächtnisschrift für Emil *Seckel* [=Abh. d. Berliner jur. Fak, 4] (Berlin 1927)

Gesellschaft und Recht im griechisch-römischen Altertum. Eine Aufsatzsammlung, I [=Deut. Akad. d. Wiss. zu Berlin, Schr. d. Sekt. f. Altertumswiss., 52] (Berlin 1968)

Gioffredi, C. *Contributi* allo studio del processo civile romano (Milan 1947)

Girard, P. F. *Histoire* de l'organisation judiciaire des Romains, I (Paris 1901)

Girard, P. F. *Manuel* élémentaire de droit romain (8th ed., Paris 1929)

Girard, P. F. *Mélanges* de droit romain. 2 vols. (Paris 1912–23)

Gradenwitz, O. *Interpolationen* in den Pandekten (Berlin 1887)

Greenidge, A. H. J. The legal *Procedure* of Cicero's time (Oxford 1901)

Greenidge, A. H. J. Roman *Public Life* (London 1911, repr. 1930)

Grosso, G. *Premesse* generali al corso di diritto romano (4th ed., Turin 1960)

Grosso, G. *Problemi* generali del diritto attraverso il diritto romano (2d ed., Turin 1967)

Grosso, G. *Schemi* giuridici e società nella storia del diritto privato romano (Corsi universitari) (Turin 1970)

Grosso, G. Lezioni di *storia* del diritto romano (4th ed., Turin 1960)

Gualandi, G. *Legislazione* imperiale e giurisprudenza [=Univ. di Roma. Pubbl. dell'Ist. di dir. rom. e dei dir. dell'or. medit., 38]. 2 vols. (Milan 1963)

Guarino, A. L'*esegesi* delle fonti del diritto romano. 2 vols. (Naples 1968)

Guarino, A. L'*ordinamento* giuridico romano. Introduzione allo studio del diritto romano (3d ed., Naples 1959)

Guarino, A. *Storia* del diritto romano (3d ed., Milan 1963)

Hammond, M. The *Antonine Monarchy* [=Papers and Monogr. of the Am. Acad. in Rome, 19] (Rome 1959)

Hardy, E. G. Three Spanish *Charters* and other Documents (Oxford 1912)

Hirschfeld, O. Kleine *Schriften* (Berlin 1913)

Hirschfeld, O. Die kaiserlichen *Verwaltungsbeamten* bis auf Diocletian (2d ed., 1905, repr. 1963)

Honoré, A. M. *Gaius*. A Biography (Oxford 1962)

Horak, F. *Rationes* decidendi. (Entscheidungsbegründungen bei den älteren römischen Juristen bis Labeo, I (Aalen 1969)

Huvelin, P. Cours élémentaire de *droit romain*, publié par les soins de R. Monier. 2 vols. (Paris 1927–29)

Iglesias, J. *Derecho romano*. Instituciones de derecho privado (6th ed., Barcelona 1972)

*Index Interp*olationum quae in Iustiniani Digestis inesse dicuntur, ed. E. Levy – E. Rabel. 3 vols. and Supp. (Weimar 1929–35)

Jhering, R. von *Geist* des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung. 3 vols. (5th/6th ed., Leipzig 1906–21)

Jhering, R. von *Scherz* und Ernst in der Jurisprudenz. Eine Weihnachtsgabe für das juristische Publikum (12th ed., Leipzig 1921)

Jobbe-Duval, E. *Études* sur l'histoire de la procédure civile chez les Romains, I (Paris 1896)

Jolowicz, H. F. Historical *Introduction* to the Study of Roman Law (2d ed., Cambridge 1952)

Jolowicz, H. F. – B. Nicholas, Historical *Introduction* to the Study of Roman Law (3d ed., Cambridge 1972)

Jones, A. H. M. The Criminal *Courts* of the Roman Republic and Principate, ed. by J. A. Crook (Oxford 1972)

Jones, A. H. M. *Studies* in Roman Government and Law (Oxford 1960)

Jörs, P. Römische *Rechtswissenschaft* zur Zeit der Republik, I: Bis auf die Catonen (Berlin 1888)

Jörs, P. – W. Kunkel – L. Wenger, *Röm*isches *Recht*: Römisches Privatrecht; Abriss des römischen Zivilprozessrechts (3d ed., Berlin 1949)

Kalb, W. *Roms Juristen* nach ihrer Sprache dargestellt (Leipzig 1890)

Karlowa, O. Der römische *Civilprozess* zur Zeit der Legisactionen (Berlin 1872, repr. 1972)

Karlowa, O. Römische *Rechtsgeschichte*. 2 vols. (Leipzig 1885–1901)

Kaser, M. Das *altröm*ische '*ius*'. Studien zur Rechtsvorstellung und Rechtsgeschichte der Römer (Göttingen 1949)

Kaser, M. *Eigentum* und Besitz im älteren römischen Recht [=Forsch. z. röm. Recht, 1] (2d ed., Cologne/Graz 1956)

Kaser, M. Zur *Methode* der römischen Rechtsfindung [=Nachr. d. Akad. d. Wiss. in Göttingen, philol.-hist. Kl., 1962.2] (Göttingen 1962)

Kaser, M. Römische *Rechtsgeschichte* (2d ed., Göttingen 1967)

Kaser, M. Das *römi*sche *Privatrecht*, I–II [=Rechtsgeschichte des Altertums im Rahmen des Handbuchs der Altertumswissenschaft, III. Teil, 3. Band, 1.–2. Abs.] (2d ed., Munich 1971–75)

Kaser, M. Das Römische *Zivilprozessrecht* [=Rechtsgeschichte des Altertums im Rahmen des Handbuchs der Altertumswissenschaft, III. Teil, 4. Band] (Munich 1966)

Kelly, J. M. Studies in the Civil *Judicature* of the Roman Republic (Oxford 1976)

Kipp, T. *Geschichte* der Quellen des römischen Rechts (4th ed., Leipzig 1919)

Kleineidam, F. Die *Personalexekution* der Zwölftafeln (Breslau 1904)

Kniebe, O. Zur Lehre vom römischen *Gewohnheitsrecht* in vorjustinianischer Zeit (Freiburg 1908)

Kniep, F. Der Rechtsgelehrte *Gaius* und die Ediktskommentare (Jena 1910)

Krampe, C. *Proculi Epistulae*. Eine frühklassische Juristenschrift [=Freib. Rechts- u. Staatswiss. Abh., 34] (Karlsruhe 1970)

Kreller, H. Das *Problem* des Juristenrechts in der römischen Rechtsgeschichte [=Recht u. Staat in Gesch. u. Gegenwart, 94] (Tübingen 1932)

Krüger, P. *Geschichte* der Quellen und Literatur des römischen Rechts [=System. Handb. d. Deut. Rechtswiss., ed. K. Binding, I] (2d ed., Munich 1912)

Kübler, B. *Geschichte* des römischen Rechts (Leipzig 1925)

Kunkel, W. *Herkunft* und soziale Stellung der römischen Juristen (2d ed., Graz/Vienna 1967)

Kunkel, W. An *Introduction* to Roman Legal and Constitutional History, trans. by J. M. Kelly (2d ed., Oxford 1966)

Kunkel, W. Römische *Rechtsgeschichte*. Eine Einführung (4th ed., Cologne/Graz 1964)

Labruna, L. *Vim fieri veto*. Alle radici di una ideologia [= Pubbl. d. Scuola di perfez. i. dir. civ. dell'Univ. de Camerino, 1] ([Naples] 1971)

Lauria, M. *Ius*. Visioni romane e moderne, I (3rd ed., Naples 1967)

Lauria, M. *Ius romanum*, I.1 (Naples 1963)

Lee, R. W. The *Elements* of Roman Law with a Translation of the Institutes of Justinian (4th ed., London 1956)

Lenel, O. Das *Edictum* Perpetuum. Ein Versuch zu seiner Wiederherstellung (3d ed., Leipzig 1927, repr. 1956)

Lenel, O. *Palingenesia* iuris civilis. 2 vols. (Leipzig 1889, repr. 1961)

Levy, E. Die römische *Kapitalstrafe* [= Sitzb. d. Heidelb. Akad. d. Wiss., philos.-hist. Kl. 1930/31, 5] (Heidelberg 1931)

Levy, E. Die *Konkurrenz* der Aktionen und Personen im klassischen römischen Recht. 2 vol. in 3 (Berlin/Weimar 1918–62)

Levy, E. *Pauli Sententiae*. A Palingenesia of the Opening Titles as a Specimen of Research in West Roman Vulgar Law (Ithaca, N.Y. 1945)

Levy, E. Gesammelte *Schriften* zu seinem achtzigsten Geburtstag, ed. by W. Kunkel – M. Kaser. 2 vols. Cologne/Graz 1963)

Levy, E. West Roman *Vulgar* Law, I: The Law of Property (Philadelphia 1951)

Lévy-Bruhl, H. Quelques *problèmes* des très ancien droit romain (Paris 1947)

Lévy-Bruhl, H. *Recherches* sur les actions de la loi (Paris 1960)

Lewis, Sir G. C. An *Inquiry* into the Credibility of the Early Roman History. 2 vols. (London 1855)

Lombardi, L. *Saggio* sul diritto giurisprudenziale [= Pubbl. dell'Ist. di filos. di dir., Univ. di Roma, 3 ser., 2] (Milan 1967)

Lübtow, U. von Das römische *Volk*. Sein Staat und sein Recht (Frankfurt 1955)

Luzzatto, G. I. Per un'*ipotesi* sulle origini e la natura della obbligazione romana [= Fond. Castelli, 8] (Milan 1934)

Luzzatto, G. I. Procedura civile romana. 3 vols. (Bologna 1946–50)

Magdelain, A. Les *actions* civiles [= Publ. de l'Inst. de dr. rom., Univ. de Paris, 11] (Paris 1954)

Magdelain, A. *Auctoritas* principis [= Collect. d'ét. lat., sér. scient., 22] (Paris 1947)

Marquardt, J. Römische *Staatsverwaltung* [= Handb. d. Röm. Altertums, 4–6] 3 vols. (2d ed., Leipzig 1881–85, repr. 1957)

Martini, R. *Avviamento* esegetico allo studio del diritto romano (Turin 1967)

Martini, R. Le *definizioni* dei giuristi romani [= Univ. di Milano, Pubbl. della Fac. di Giuris., S. II: Studi di dir. rom., 3] (Milan 1966)

Martini, R. Il *problema* della causae cognitio pretoria [= Circ. toscano di dir. rom. e storia d. dir., 3] (Milan 1960)

Maschi, C. A. Il *diritto romano*, I: La prospettiva storica della giurisprudenza classica (Milan 1966)

Meinhart, M. Die *Senatusconsulta* Tertullianum und Orfitianum in ihrer Bedeutung für das klassische römische Erbrecht [= Wiener rechtsgesch. Arbeit., 9] (Graz/Vienna/Cologne 1967)

Meira, S. A. B. A lei das *XII, Tábuas* fonte do direito público e privado (2nd ed., Rio de Janeiro 1961)

Mélanges de droit romain dédiés à Georges *Cornil*. 2 vols. (Ghent/Paris 1926)

Mélanges Paul *Fournier*. De la Bibliothèque d'histoire du droit, publ. de la Soc. d'hist. du droit (Paris 1929)

Mélanges P. F. *Girard*. Études de droit romain dédiées à Mr. P. F. Girard, Professeur de droit romain à l'Université de Paris à l'occasion du 60^{e} anniversaire de sa naissance (26 Octobre 1912). 2 vols. (Paris 1912)

Mélanges H. *Grégoire*. Annuaire de l'Institut de philologie et d'histoire orientale, Univ. libre de Bruxelles, 9–11. 3 vols. (Brussels 1949–51)

Mélanges Philippe *Meylan*. Recueil de travaux publiés par la Faculté de droit de l'Université de Lausanne. 2 vols. (Lausanne 1963)

Mitteis, L. *Römisches Privatrecht* bis auf die Zeit Diokletians [= System. Handb. d. Deut. Rechtswiss., I.6] (Leipzig 1908)

Mitteis, L. *Reichsrecht* und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs (Leipzig 1891, repr. 1963)

Mnemosynon Bizoukides. Epistêmonikê Epetêris, 8. (Thessalonica 1963)

Mommsen, T. Juristische *Schriften*. 3 vols. (Berlin 1905–07)

Mommsen, T. Römisches *Staatsrecht*. 3 vols. in 5. (3d ed., Leipzig 1887, repr. 1952–53)

Noailles, P. *Du droit sacré* au droit civil. Cours de droit romain approfondi, 1941–42 Paris 1949)

Noailles, P. '*Fas*' et 'ius', Études de droit romain (Paris 1948)

Nörr, D. *Divisio* und Partitio [= Münch. Univ.-schriften, Jur. Fak., Abh. z. rechtswiss. Grundl., 4] (Berlin 1972)

Orestano, R. *Introduzione* allo studio storico del diritto romano (2d ed., Turin 1963)

Orestano, R. Il *potere* normativo degli imperatori e le costituzioni imperiali. Contributi alla teoria delle fonti del diritto nel periodo classico. Nota prima (Rome 1937)

Pacchioni, G. Corso di *diritto romano*. 3 vols. (2d ed., Turin 1918)

Pais, E. *Ricerche* sulla storia e sul diritto pubblico di Roma, I–IV (Rome 1915–21)

Partsch, J., Jr. Aus nachgelassenen und kleineren verstreuten *Schriften* [= Freib. rechtsgesch. Abhand., 1] (Berlin 1931)

*Per il XIV cen*tenario della codificazione giustinianea. Studi di diritto pubblicati dalla Facoltà di Giurisprudenza dell'Università di Pavia a cura di P. Ciapessoni (Pavia 1934)

Pernice, A. *Labeo*. Römisches Privatrecht im ersten Jahrhundert der Kaiserzeit. 3 vols. (Halle 1873–1900, repr. 1963)

Pernice, H. *Miscellanea* zu Rechtsgeschichte und Texteskritik, I (Prag 1870)

Perozzi, S. *Istituzioni* di diritto romano. 2 vols. (2d ed., Rome 1928, repr. 1970)

Peter, H. *Actio* und Writ. Eine vergleichende Darstellung römischer und englischer Rechtsbehelfe (Tübingen 1957)

Pflaum, H. G. Les *carrières* procuratoriennes équestres sous le Haut-Empire romain. 4 vols. (Paris 1960–61)

Pflaum, H. G. Les *procurateurs* équestres sous le Haut-Empire romain (Paris 1950)

Preisigke, F. Die *Inschrift von Skaptoparene* in ihrer Beziehung zur kaiserlichen Kanzlei in Rom [= Schr. d. Wiss. Gesells. zu Strassburg, 30] (Strassburg 1917)

Pringsheim, F. Gesammelte *Abhandlungen*. 2 vols. (Heidelberg 1961)

*Proc*eedings of the *XIIth* International *Cong*ress of *Papyr*ology [= Amer. Stud. in Papyr., 7] (Toronto 1970)

Puchta, G. F. Cursus der *Institutionen*, nach dem Tode des Verfassers besorgt von P. Krüger. 2 vols. (10th ed., Leipzig 1893)

Pugliese, G. *Actio* e diritto subiettivo [= Pubbl. d. Ist. di dir. rom. e dei dir. dell'or. medit., 8] (Milano 1939)

Pugliese, G. Il *processo* civile romano. 2 vols. (Rome 1962–63)

Rabel, E. *Grundzüge* des römischen Privatrechts, F. von Holtzendorffs Enzyklopädie der Rechtswissenschaft I (7th ed., 1915) 399–540 (repr. Basel 1955)

Recueil d'études sur les sources du droit en l'honneur de François *Gény*. 3 vols. (Paris 1934)

Riccobono, S. *Lineamenti* della storia delle fonti e del diritto romano (Milan 1949)

Riccobono, S. *Scritti* di diritto romano. 2 vols. (Palermo 1957–64)

Riccobono, Jr., S. Il *Gnomon* dell'Idios Logos (Palermo 1950)

Riccobono, Jr., S. *Profilo* storico del diritto romano (Palermo 1955)

Roby, H. J. An *Introduction* to the Study of Justinian's Digest (Cambridge 1886)

Roby, H. J. *Roman Private Law* in the times of Cicero and of the Antonines. 2 vols. (Cambridge 1902)

Rotondi, G. *Leges* publicae populi romani Milan 1912, repr. 1966)

Rotondi, G. *Scritti* giuridici. 3 vols. (Milan 1922)

Rudorff, A. F. Römische *Rechtsgeschichte* zum akademischen Gebrauch. 2 vols. (Leipzig 1857–59)

Samter, R. Nichtförmliches *Gerichtsverfahren* (Weimar 1911)

Sanio, F. D. Zur *Geschichte* der römischen Rechtswissenschaft. Ein Prolegomenon (Königsberg 1858)

Sanio, F. D. *Varroniana* in den Schriften der römischen Juristen. Das Fragment des Pomponius de origine iuris (Leipzig 1867)

San Nicolo, M. *Beiträge* zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen (Oslo 1931)

Santalucia, B. I. '*libri opinionum*' di Ulpiano [= Fondaz. Agostino Poggi, Univ. di Gènova, 8–9] 2 vols. (Milan 1971)

Savigny, F. C. von Vermischte *Schriften*. 5 vols. (Berlin 1850)

Scherillo, G.-A. dell'Oro. *Manuale* di storia del diritto romano (Milan 1950)

Schiller, A. A. An *American Experience* in Roman Law. Writings from Publications in the United States (Göttingen 1971)

Schiller, A. A. Legal Commentary to *Apokrimata*. Decisions of Septimius Severus on Legal Matters, ed. by W. L. Westermann (New York 1974)

Schiller, A. A. *Bibliography* of Roman Law. Libraries Study Project, Assoc. of Amer. Law Schools (Typescript, New York 1966)

Schiller, A. A. *Law Books* Recommended for Libraries, No. 43: Roman Law [= Assoc. of Amer. Law Schools, Libraries Study Project], 1 vol. & Supp. (So. Hackensack, T. J., 1968–74)

Schiller, A. A. *Texts and Commentary* for the Study of Roman Law. Mechanisms of Development (New York 1936–40)

Schmidlin, B. Die römischen *Rechtsregeln* [= Forschungen z. röm. Recht, 29] (Cologne/Vienna 1970)

Schmiedel, B. *Consuetudo* im klassischen und nachklassischen römischen Recht [= Forschungen z. röm. Recht, 22] (Graz/Cologne 1966)

Schulz, F. *Classical* Roman *Law* (Oxford 1951)

Schulz, F. *Einführung* in das Studium der Digesten (Tübingen 1916)

Schulz, F. *Geschichte* der römischen Rechtswissenschaft (Weimar 1961)

Schulz, F. *History* of Roman Legal Science (with additions) (Oxford 1953)

Schulz, F. *Principles* of Roman Law, trans. by M. Wolff (Oxford 1936)

Schwind, F. Freih. von, Zur Frage der *Publikation* im römischen Recht [= Münch. Beitr., 31] (Munich 1940)

Scott, S. P. The *Civil Law* . . . translated from the original Latin. 17 vols. (Cincinnati 1932)

Scritti sull'Ebraismo in memoria di G. *Bedarida* (Florence 1966)

Scritti della Facoltà giuridica di Bologna in onore di Umerto *Borsi* (Padua 1955)

Scritti giuridici dedicati ed offerti a Giampietro *Chironi* nel XXXIII anno del suo insegnamento. 3 vols. (Turin 1915)

Scritti in onore di Contardo *Ferrini* in occasione della sua beatificazione. 4 vols. (Milan 1947–48)

Scritti di diritto romano in onore di Contardo *Ferrini*, pubblicati della R. Universita di *Pavia* (Milan 1946)

Scritti giuridici raccolti per il centenario della Casa editrice *Jovene*, 1854–1954 (Naples 1954)

Seidl, E. Römische *Rechtsgeschichte* und römisches Zivilprozessrecht (3d ed., Cologne 1971)

Seidl, E. *Rechtsgeschichte Ägyptens* als römische Provinz (Sankt Augustin 1973)

Serrao, F. La '*iurisdicio*' del praetore peregrino (Milan 1954)

Sherwin-White, A. N. The Roman *Citizenship* (2d ed., Oxford 1973)

Sherwin-White, A. N. The *Letters* of Pliny. A Historical and Social Commentary (Oxford 1966)

Siber, H. *Römisches Recht* in Grundzügen für die Vorlesung. 2 vols. (Berlin 1925, repr. 1 vol., 1968)

Siber, H. Römisches *Verfassungsrecht* in geschichtlicher Entwicklung (Lahr 1952)

Société nationale des *antiquaires de France*. Centenaire 1804–1904. Recueil des mémoires publiés par les membres de la Société (Paris 1904)

Sohm, R, – J. C. Ledlie. The *Institutes*. A Textbook of the History and System of Roman Private Law, trans. by J. C. Ledlie (3d ed., Oxford 1907)

Sohm, R. – Mitteis, L. – Wenger, L. *Institutionen*. Geschichte und System des römischen Privatrechts, bearbeitet von L. Mitteis, hgg. von L. Wenger (17th ed., Munich/Leipzig 1930)

Solazzi, S. *Scritti* di diritto romano. 6 vols. (Naples 1955–72)

Spangenberg, E. *Einleitung* in das Römisch-Justinianeische Rechtsbuch oder Corpus iuris civilis Romani (Hannover 1817)

Stein, P. *Regulae* iuris. From Juristic Rules to Legal Maxims (Edinburgh 1966)

La *Storia del Diritto* nel quadro delle scienze storiche [= Atti del Primo Congresso internazionale della Società Italiana di Storia del Diritto] (Florence 1966)

Strachan-Davidson, J. L. *Problems* of the Roman Criminal Law. 2 vols. (Oxford 1912)

Stroux, J. Römische *Rechtswissenschaft* und Rhetorik (Potsdam 1949)

Stroux, J. *Summum ius* summa iniuria. Ein Kapitel aus der Geschichte der interpretatio iuris (Leipzig/Berlin [1926])

Stroux, J. – L. Wenger. Die *Augustusinschrift* auf dem Marktplatz von Kyrene [= Abh. München, 34.2] (Munich 1928)

Studi in memoria di Emilio *Albertario*. 2 vols. (Milan 1953)

Studi in memoria di Aldo *Albertoni*. 3 vols. (Padua 1934–38)

Studi in onore di Vincenzo *Arangio-Ruiz* nel XLV anno del suo insegnamento. 4 vols. (Naples 1953)

Studi di storia in onore di Enrico *Besta* per il XL anno del suo insegnamento. 4 vols. (Milan 1939)

Studi in onore di Emilio *Betti*. 5 vols. (Milan 1962)

Studi in onore di Biondo *Biondi*. 4 vols. (Milan 1965)

Studi in onore di Pietro *Bonfante* nel XL anno d'insegnamento. 4 vols. (Milan 1929–30).

Studi in onore di Biagio *Brugi* nel XXX anno del suo insegnamento (Palermo 1910)

Studi di diritto processuale in onore di Giuseppe *Chiovenda* nel venticinquesimo anno del suo insegnamento (Padua 1927)

Studi in onore di Pietro *De Francisci*. 4 vols. (Milan 1956)

Studi in memoria di Guido *Donatuti*. 3 vols. (Milan 1973)

Studi giuridici in onore di Carlo *Fadda* per XXV anno del suo insegnamento. 6 vols. (Naples 1906)

Studi in memoria di Francesco *Ferrara*. 2 vols. (Milan 1943)

Studi in onore di Giuseppe *Grosso*. 6 vols. Turin (1968–72)

Studi in memoria di Paolo *Koschaker*. L'Europa e il diritto romano. 2 vols. (Milan 1954)

Studi in onore di Silvio *Perozzi* nel XL anno del suo insegnamento (Palermo 1925)

Studi in memoria di Umberto *Ratti* (Milan 1934)

Studi in onore di Salvatore *Riccobono* nel XL anno del suo insegnamento. 4 vols. (Palermo 1936)

Studi in onore di Gioacchino *Scaduto* (Padua 1970)

Studi in onore di Antonio *Segni* [= Pubbl. della Fac. di Giuris. dell'Univ. di Roma, 28–31] 4 vols. (Milan 1967)

Studi in onore di Siro *Solazzi* nel cinquantesimo anniversario del suo insegnamento universitario (1899–1948) (Naples 1949)

Studi in onore di Filippo *Virgilii* nel XL anno d'insegnamento [= Collana, Circolo giur. dell R. Univ. di Siena, 1] (Rome 1935)

Studi in onore di Edoardo *Volterra*. 6 vols. (Milan 1971)

Studien zur Papyrologie und antiken Wirtschaftsgeschichte Friedrich *Oertel* zum achtzigsten Geburtstag gewidmet (Bonn 1964)

Stühff, G. *Vulgarrecht* im Kaiserrecht unter besonderer Berücksichtigung der Gesetzgebung Konstantins des Grossen [= Forschungen z. röm. Recht, 21] (Weimar 1966)

Symbolae iuridicae et historicae Martino *David* dedicatae. 2 vols. (Leiden 1968)

Symbolae Friburgenses in honorem Ottonis *Lenel* (Leipzig [1931])

Symbolae ad jus et historiam antiquitatis pertinentes Julio Christiano *van Oven* dedicatae (Leiden 1946)

Sympotica Franz *Wieacker* sexagenario Sasbachwaldeni a suis libata (1968) (Göttingen 1970)

Synteleia Vincenzo *Arangio-Ruiz* [= Biblioteca di Labeo, 2]. 2 vols. (Naples 1964)

Taubenschlag, R. *Opera* minora. 2 vols. (Warsaw/The Hague/Paris 1959)

Täubler, E. *Untersuchungen* zur Geschichte des Decemvirats und der Zwölftafeln (Berlin 1921)

Thomas, J. A. C. *Textbook* of Roman Law (Amsterdam/New York 1976)

Tibiletti, G. *Principe* e magistrati repubblicani [= Stud. Ist. ital. per la storia antica, 9] (Rome 1953)

Varia. Études de droit romain, I–IV [= Publ. de l'Inst. de droit rom. de l'Univ. de Paris, 10, 14, 16, 20] (Paris 1952–)

Viereck, P. *Sermo graecus* quo senatus populusque romanus magistratusque populi romani usque ad Tiberii Caesaris aetatem in scriptis publicis usi sunt examinatur Göttingen 1888)

Vinogradoff, P. The Collected *Papers*, by H. A. L. Fisher. 2 vols. (Oxford 1928)

Visscher, F. de La *condictio* et le système de la procédure formulaire (Ghent 1923)

Visscher, F. de Les *Édits* d'Auguste découverts à Cyrène [= Univ. de Louvain, Recueil de travaux, sér. 3, fasc, 1] (Louvain 1940)

Visscher, F. de *Études* de droit romain (Paris 1931)

Visscher, F. de *Nouvelles études* de droit romain public et privé (Milan 1949)

Voigt, M. Das *jus naturale*, aequum et bonum und ius gentium der Römer. 4 vols. in 5 (Leipzig 1856–76, repr. 1966)

Voigt, M. Römische *Rechtsgeschichte*. 3 vols. (Leipzig 1892–1902)

Volterra, E. *Istituzioni* di diritto privato romano (Rome 1961)

Vonglis, B. *Sententia legis*. Recherches sur l'interprétation de la loi dans la jurisprudence classique (Paris 1965)

Watson, A. *Law Making* in the Later Roman Republic (Oxford 1974)

Watson, A. The Law of *Obligations* in the Later Roman Republic (Oxford 1965)

Weiss, E. *Griechi*sches *Privatrecht* auf rechtsvergleichender Grundlage, I: Allgemeine Lehren (Leipzig 1923)

Weiss, E. *Institutionen* des römischen Privatrechts als Einführung in die Privatrechtsordnung der Gegenwart (Stuttgart 1949)

Weiss, E. *Grundzüge* der römischen Rechtsgeschichte (Reichenberg 1936)

Weiss, E. *Studien* zu den römischen Rechtsquellen (Leipzig 1914, repr. 1971)

Wenger, L. *Canon* in den römischen Rechtsquellen und in den Papyri [= Sitzb. Wien 220.2] (Vienna 1942)

Wenger, L. *Institutes* of the Roman Law of Civil Procedure, trans. O. H. Fisk (New York 1940)

Wenger, L. *Institutionen* des römischen Zivilprozessrechts (Munich 1925)

Wenger, L. *Praetor* und Formel [= Sitzb. München 1926.3] (Munich 1926)

Wenger, L. Die *Quellen* des römischen Rechts (Vienna 1953)

Wesel, U. Rhetorische *Statuslehre* und Gesetzesauslegung der römischen Juristen [Ann. Saraviensis, 29] (Saarbrücken 1967)

Westermann, W. L. – A. A. Schiller. *Apokrimata.* Decisions of Septimius Severus on Legal Matters (New York 1954)

Westrup, C. W. *Introduction* to early Roman law. Comparative sociological studies: The patriarchal joint family, IV–V, Sources and methods. 2 vols. (London 1950–54)

Wieacker, F. Über das *Klassische* in der römischen Jurisprudenz [= Recht und Staat, 156] (Tübingen 1950)

Wieacker, F. Vom *römi*schen *Recht*. Zehn Versuche (2d ed., Stuttgart 1961)

Wieacker, F. '*Studien* zur hadrianischen Justizpolitik,' Romanistische Studien [= Freib. rechtsgesch. Abh., 5] 43–81 (Freiburg 1935)

Wieacker, F. *Textstufen* klassischer Juristen [= Abh. Göttingen, 3 F., 45] (Göttingen 1960)

Willems, P. Le *sénat* de la République romaine: sa composition et ses attributions. 3 vols. (Louvain 1885)

Windscheid, B. Lehrbuch des *Pandektenrechts.* 3 vols. (9th ed. by T. Kipp, Frankfurt 1906)

Wlassak, M. Römische *Prozessgesetze.* Ein Beitrag zur Geschichte des Formularverfahrens. 2 vols. (Leipzig 1888–91)

Wlassak, M. Zum römischen *Provinzialprozess* [= Sitzb. Wien 190.4] (Vienna 1919)

Wlassak, M. Die klassische *Prozessformel* mit Beiträgen zur Kenntnis des Juristenberufes in der klassischen Zeit [= Sitzb. Wien 202.3] (Vienna 1924)

Wlassak, M. Kritische *Studien* zur Theorie der Rechtsquellen im Zeitalter der klassischen Juristen (Graz 1884)

Zocco-Rosa, A. La *Palingenesi* della procedura civile di Roma (Rome 1888)

Zulueta, F. de The *Institutes* of Gaius, Part II: Commentary (Oxford 1953)

IV. Dictionaries and Encyclopedic Works

ANRW = Aufsteig und Niedergang der Römischen Welt, ed. H. Temporini – W. Haase,
Part I (To the end of the Republic), vol. 2 (Berlin/New York 1972)

Part II (Principate), vol. 15 (Berlin/New York 1976)

Berger, *ED* = A. Berger, Encyclopedic Dictionary of Roman Law, *Trans. Am. Philos. Soc.* 43 (1953) 333–808.

DACL = Dictionnaire d'archéologie chrétienne et de liturgie (1903–1953)

DE = Dizionario epigrafico di antichità romane, ed. E. de Ruggiero et al., (1886–)

DS = C. Daremberg – E. Saglio, Dictionnaire des antiquités grecques et romaines d'après les textes et les monuments (1877–1919)

EdD = Enciclopedia del diritto (1958–)

Heumann – Secket, *Handlexikon* = Handlexikon zu den Quellen des römischen Rechts, ed. Heumann – E. Seckel (9th ed., 1907, repr. 1958)

Kl. Pauly = Der kleine Pauly. Lexikon der Antike, auf der Grundlage von Pauly Wissowas Realencyclopädie der classischen Altertumswissenschaft (1962–)

LAW = Lexikon der alten Welt (1965)

NDI = Nuovo Digesto Italiano (1937–1956)

NNDI = Novissimo Digesto Italiano (1957–1975)

OCD = Oxford Classical Dictionary, ed. T. G. L. Hammond – H. H. Scullard (2d ed., 1970)

OLD = Oxford Latin Dictionary (1968–)

PIR = Prosopographia Imperii Romani saec. I, II, III, ed. E. Groag – A. Stein (2d ed., 1933–)

RAC = Reallexikon für Antike und Christentum (1941–)

RE = Realencyclopädie der classischen Altertumswissenschaft, ed. G. Wissowa – W. Kroll et al. (1893–)

VIR = Vocabularium Iurisprudentiae Romanae, ed. O. Gradenwitz – B. Kübler et al. (1894–)

V. Miscellaneous

ad h.l. = ad hunc locum (to this place)

a° = actio (action)

const. = constitutio (imperial enactment)

EP = Edictum perpetuum (compilation of perpetual edict in time of Hadrian)

i.f. = in fine (at the end)

itp. = interpolated

l. = lex (statute, fragment in the Digest)

loc. cit. = locus citatus (place cited)

n. = note

n.s. = new series

op. cit. = opus citatus (work cited)

pr. = principium (beginning portion of a fragment in the Digest)

SC = senatus consultum (resolution of the Senate)

s.v. = sub voce (under the word)

[ ] = interpolation (words within square brackets added at a later time)

< > = conjectured restoration (words within pointed brackets which have been omitted in the later text)

... = lacuna in the text, or omission by the author

BOOK I

Introduction

CHAPTER I

The Study of Roman Law

§ 1 In a curriculum primarily devoted to the principles and practices of present-day American law it may be pertinent to question the inclusion of a course dealing with the Roman law. What purposes can be served by instruction in the elements of a legal system of the ancient world that warrants competition, even on an elective basis, with the multifold offerings in various fields for specialists, in modern foreign law, in economic-legal and other cross-disciplinary subject matter? An attempt will be made in this chapter to describe the historical precedents of Roman law study, the values that have been attributed to its study, the possible materials and methods of instruction, concluding with the particular purposes to be served by this course, and the methods of instruction to be followed. The next chapter will treat of the materials which will be utilized. It is evident that the aim pursued can only be realized by the employment of the right tools and the manner of their use proper to the particular undertaking.

A. MEDIEVAL AND EARLY MODERN STUDY

§ 2 The study of Roman law in western Europe dates back to the 11th century, to Bologna and other city states of northern Italy, centuries after the downfall of the Roman Empire in the west. At the start the mass of material contained in the manuscripts which formed the basis for the study of the Roman law was looked upon as a storehouse of pristine legal data, to be sorted out and arranged for comprehension by the students who flocked to the universities of Italy, of France and of other countries from the whole of western Europe. Before long the efforts of the first group of scholar-professors (the Glossators) were succeeded by those who undertook to expound the Roman law as the substratum of law to supplement contemporary statutory enactments and court decisions. This group of teachers and writers is known as the Commentators or Post-Glossators. The Roman law which they taught formed the major element in the common law (ius commune) which spread throughout Europe, from Poland to Spain, from Austria to Scotland – skip-

ping England. In later centuries there were some who taught and wrote upon Roman law as they conceived it to have been in the days of ancient Rome (the Humanists); others, like Hugues Doneau, or Donellus (1527–1591),[1] attempted a systematic arrangement of the law upon the basis of Roman legal principles; still others (the School of Natural Law) fashioned an ideal universal system by subjecting the experience with the Roman legal ideas of the preceding centuries to the current philosophical views of the 16th, 17th and early 18th centuries. All this study of the Roman law, however, has very little significance to the American law school of today. It may well be the substance of the courses in legal history in the various European countries in which the events took place.[2] It also should serve to broaden the knowledge of the student of medieval and early modern European history. The law student, however, needs only to be referred to the leading studies in this field, together with a few surveys which are available in English.[3]

B. THE HISTORICAL SCHOOL AND PANDECT LAW

§ 3 The 19th century brought about a substantial change in the role of Roman law in western Europe. In Germany, the so-called Historical School, the chief exponent of which was Savigny,[1] displaced the natural law school, and saw a return to the historical approach to the Roman law in order to understand the evolution of legal institutions. In fact, the writers and teachers of this school of thought gave a positive law approach to natural law and contemporary application of Roman legal principles to the current scene.[2]

The disciples of the Historical School became the leaders in the movement known as Pandect law, so-termed from the Greek title for the Digesta of the emperor Justinian, the primary source of the substance of the Roman

1. Lauria, *Ius* 359 ff., has recently emphasized Donellus' role in the evolution of legal study in western Europe.

2. Typical examples: Calasso, *Medio Evo del diritto*, I: *Le fonti* (Milano 1954); Wesenberg, *Neuere deutsche Privatrechtsgeschichte im Rahmen der europäischen Rechtsentwicklung* (Lahr 1954). Cf. also Jolowicz, *Roman Foundations of Modern Law* (Oxford 1957).

3. The classical work, Savigny, *Geschichte des römischen Rechts im Mittelalter*, vols. I–VII (2d ed., Heidelberg 1834–51), has long been out of date; a new exposition of the role of Roman law in medieval and early modern times is an international undertaking under the title, *Ius Romanum Medii Aevi (IRMAE)*, the first parts of which have already appeared (Milano 1961 ff.). Brief surveys of recent date: Wieacker, 'Europa und das römische Recht', *Röm. Recht* 288–304, 327–30; Lauria, *Ius* 353–73. In English, Vinogradoff, *Roman Law in Medieval Europe* (2d ed., Oxford 1929); Sohm – Ledlie, *Institutes* 136–62.

1. Cf. Sachers, 'Das historische Schule Savigny's und das römische Recht', *Atti Cong. Bologna* II (1935) 217–50.

2. Wieacker, *Röm. Recht* 300 f.

law which has been preserved to us. These writers and teachers employed the systematic structure of the law which had been worked out a century earlier,[3] developed the whole complex of legal rules and institutions to fit the emerging modern life, largely on the framework of the historical development of institutions which had been worked out by the efforts of their teachers; a system of law which resembled that of the natural law school in that it purported to take care of any novel legal situation that might arise.[4] It has been said, that both 'the common law and Pandect law certainly merit the attention of modern jurists; they constitute an arena for legal education and a model for dogmatic elaboration, representing the more immediate historical antecedents of modern civil law. But they pertain to the history of modern law rather than to Romanistic science; they have nothing to say with respect to Roman law'.[5]

The influence of the Historical School spread to France and Italy – as well as to Britain and the United States – and Pandect law constituted the fundamental course in Roman law in much of western Europe during the last quarter of the 19th and the first decades of the 20th centuries. But outside of Germany it served rather as a historical complement to the national legal system than as a model for a comprehensive code of private law.[6]

C. THE CRISIS OF THE ROMAN LAW

§ 4 With the enactment of the German Civil Code in 1900 the reason for a Pandect law largely disappeared. It had served its purpose, preparing the way for a system of law to satisfy modern needs. Already some decades earlier, research into the ancient Roman law had led many of the scholars and teachers away from the purely dogmatic approach of the Pandectists. During the first three decades of the 20th century, more and more professors in Germany, in Italy, in France turned their efforts to analyzing the development of legal institutions within the several distinct periods of the ancient Roman state itself. Yet 'Institutionen, Droit romain, Diritto romano' was a combination of the sweep of seven or more centuries of legal institutions of Rome, encumbered with systematic ideas evolved in early modern times

3. Schwarz, *SZ* 42 (1921) 578–610.

4. Schwarz, 'Pandektenwissenschaft und heutiges romanistisches Studium', *Festgabe Zurich* (1928) [reprint] 10–18.

5. Biondi, *Prospettive* 7.

6. See, for example, Girard's description of his 'Pandectes' lectures in Paris at the beginning of the 20th century, 'L'enseignement des Pandectes', *Mélanges* I 467–81.

and the general principles emphasized in Pandect law; this was the basic course in Roman law in continental universities.

In 1938 Koschaker published his epochal 'Crisis of the Roman Law.'[1] There had been earlier portents. In 1926 Appleton had noted that the enemies of the teaching of Roman law pointed to the excess of sterile erudition and lack of practical sense, together with disregard of the connection between law, at Rome, and moral standards of the society, truly a grievous fault.[2] Georgescu had likewise called attention[3] to a crisis in the study of Roman law.[4] It was the extended critique of Koschaker, however, that caused particular concern. In scholarly fashion he traced the role of Roman law through the centuries, stressing its relevance to the cultural evolution of Europe, particularly in its contribution to continental jurisprudence. In the preceding century legal history had been the helpmate of dogmatic study in developing Pandect law, culminating in the German Civil Code. But in the subsequent decades legal history had served to lessen the authority of the Corpus Iuris of Justinian, that primary collection of the Roman law which had served as the point of departure for the evolution of the European law. Koschaker emphasized excesses in the search for interpolations in the Digest – of which more anon – and the unwarranted attention to ancient legal history in general, rather than on Roman law in particular. He painted a rather glowing picture of the status of Roman law teaching in England and the United States, where this emphasis on the historical side had not been so evident. He concluded that Roman law could be saved for the curriculum only by the 'actualization' of the Roman law, providing a systematic-dogmatic exposition of the Roman private law, showing the close ties between principles of the Roman law and those of the modern law. 'In short,' Koschaker said, 'what I visualize is a systematic-dogmatic presentation of the main concepts of private law on the basis of the Roman law, which at the same time will give an introduction to European legal ideas'.[5]

The response to Koschaker's monograph was both pro and con, but in the course of the years it has been generally conceded that the crisis in

1. 'Die Krise des römischen Rechts und die romanistische Rechtswissenschaft', *Schriften der Akademie für Deutsches Recht, Gruppe Römisches Recht und fremde Rechte*, Nr. 1 (München/Berlin 1938).

2. 'Notre enseignement du droit romain, ses ennemis et ses défauts', *Mélanges Cornil* I (1926) 41–79.

3. *Exista o crisa a studilor de drept roman?* (Cernauti 1937); 'Remarques sur la crise des études de droit romain', *TR* 16 (1939) 403–33.

4. For reference to other critical comment, see the bibliography of studies on Roman law teaching by Orestano, *s.v.* Diritto romano, *NNDI* 5 (1960) 1024, 1045 ff.

5. *Op. cit.*, 79.

the Roman law was really, as Carrelli first remarked,[6] only a decline of interest by the promoters of modern law studies in the subject itself – a crisis in modern law if you will – but not any diminution in the scientific value of the Roman law. The Romanists may have lost sight of the direction of their study when its practical significance ceased, but the scholarly portrayal of legal experience of the past will ever remain an essential element of the science of law.[7] To merely write introductory chapters as historical background to monographs on modern legal institutions would indeed be a 'pedestrian and stereotyped activity, lacking the possibility of lasting very long'.[8] The Roman law has a brighter future than that. At any rate, the tremendous surge of interest in Roman law in the decades since the last war has dispelled the notion of 'crisis' completely. There may be a good deal of truth in the observation that the crisis of Roman law in Nazi Germany – with which Koschaker was concerned – was really due to the fact that the party program called for 'the replacement of the Roman law, which served the materialistic world order, by a legal system for all Germany'.[9]

D. THE PRESENT-DAY STUDY OF ROMAN LAW

1. *The Conceptual and Historical Value of the Study of Roman Law*

§ 5 A century ago a professor of the University of Rochester, in a public address, elaborated upon three values of the study of Roman law for a liberal education.[1] In the first place, Roman law deserved a prominent position because it was the most distinctive product of Roman civilization. Then, because it threw important light upon universal history, specifically, upon the development of European political and legal institutions. Finally, Roman law was said to furnish the best illustration of the principles involved in general jurisprudence. Two decades earlier Maine had stressed

6. 'A proposito di crisi del diritto romano', *SDHI* 9 (1943) 1–20.

7. Orestano, 'Il diritto romano nella scienza del diritto', *Jus* 2 (1951) 141–78; at greater length in his *Introduzione* 509 ff. Note also the review by Albanese, of the first edition of Orestano's *Introduzione*, *Iura* 5 (1954) 239, 247 ff.

8. Guarino, *Ordinamento* 13, in a good survey of the 'crisis', its literature, and its resolution, 10–15.

9. Levy, review of Koschaker, *CW* 33 (1939) 91–92; unfortunately not reprinted in Levy, *Schriften*.

1. Morey, *The Study of Roman Law in Liberal Education*; Address before the University Convocation of the State of New York, July 11, 1877 (Rochester 1911).

the extent to which Roman law 'enters into and pervades and modifies all products of human thought which are not exclusively English'.[2] Discussions of moral philosophy, of natural law as well as of international law, both public and private, are carried on, Maine points out,[3] in the terminology and the modes of reasoning peculiar to the Roman private law. Indeed, the Roman legal system may well be termed the lingua franca of juristic science.[4]

If we move from appreciation of our subject for general education to the specific values for the law student – and at the present time – the emphasis has been upon two notions. These may succinctly be termed: (1) conceptual use, and (2) historic value. Indeed, these two values served as the crux of heated controversy among Italian professors of Roman law for a quarter of a century or more. Betti, in a series of articles,[5] argues that inasmuch as the legal historian – thus the Romanist – seeks to relate his complex of experiences to the modern law, it is essential to apply modern legal principles and concepts to the object of his study. Not that the modern categories be ruthlessly employed for the Romanistic data but, that unless the contrary be shown, they serve to orient the student to the substance of the Roman law. In this way the general concepts of modern law and legal institutions will be illustrated by Roman legal materials; otherwise the study of Roman law has no meaning for the student of modern law. A leading Italian Romanist, Grosso, approves of Betti's approach, though he urges moderation in the use of modern legal concepts.[6] The answer to Betti's position was supplied by De Francisci,[7] who maintained that the Roman legal system, as any other legal system, could only be viewed on the basis of its own legal concepts. Other Italian scholars likewise have challenged Betti's views.[8]

Another Italian Romanist, Biondi, has been the staunchest supporter

2. 'Roman Law and Legal Education', *Village Communities in the East and West and other Lectures, Addresses and Essays* (New York 1880) 330, 333.

3. *Op. cit.*, 330–83.

4. The leading scholars in following years reinforced these views: Jhering, *Geist* I 16–25; Mommsen, 'Die Bedeutung des römischen Rechts', *Schriften* III 591–600.

5. Among the many discussions, see: 'Diritto romano e dogmatica odierna', *AG* 99 (1928) 129–50 and 100 (1928) 26–66; 'Educazione giuridica odierna e ricostruzione del diritto romano', *BIDR* 39 (1931) 33–71; 'Methode und Wert des heutigen Studiums des römischen Rechts (die rechtsdogmatische Methode)', *TR* 15 (1937) 137–74.

6. *Premesse*, 34 ff.; cf. Branca, 'Considerazioni sulla dogmatica romanistica con la dogmatica moderna', *RISG* 4 (1950) 131–55.

7. 'Questioni di metodo', *Studi Riccobono* I (1936) 1–19.

8. E.g., Biondi, *Prospettive* 15 ff.; Gioffredi, 'A proposito di impostazione storica e diagnosi giuridica', *AG* 146 (1954) 10–23; Guarino, *Ordinamento* 18–21, and other works there cited. Cf. also, Gallo, *SDHI* 32 (1966) 318–25.

of the study of Roman law for its historical value.[9] With the enactment of the European codes, Roman law became a science, it ceased to be an 'art', that is, law in practice. Whether it be elementary or advanced instruction, exegesis of texts or scholarly research, the study of Roman law today is and cannot be other than historical and scientific in nature. It should be possible to reconstruct, with certain lacunae, the rules and practices of the Roman law at any given moment in its history. Roman legal terminology might fill a need for the fashioning of concepts for use today.[10] But the chief value of the study of the Roman law – historical as it must be – is that it affords an unequaled exposition of the way by which legally trained persons (the jurists) worked out the precepts of a legal system in the greatest of detail and at the same time supervised the day-to-day application of the law so that the ideals of justice and the welfare of society might be realized.[11]

To other scholars, also, Roman law can only be the object of historical study.[12] This gives a new meaning to the subject, according to Brasiello, for 'modern law has shown its greater need for [study of] Roman law, be it for the better comprehension of the phenomena and of the new general problems which concern it, or for its own reforms or its own better adjustment'.[13] A strong defense of the historical study of the Roman law against purported objections and criticisms has recently been offered by Lauria.[14]

Most teachers of Roman law today, however, adopt a path combining the two views expressed above. In the opening pages of his exhaustive treatment of the sources of the Roman law, Wenger emphasizes that it is

9. An early exposition of his view was his *Prospettive romanistiche* (Milano 1933), containing an enlarged version of his introductory lectures to his course in Roman law at the Catholic University in Milan in 1931; particularly in point are pages 7 ff., 66 ff.

10. Cf. Biondi, 'La terminologia romana come prima dommatica giuridica', *Studi Arangio-Ruiz* II (1953) 73–103.

11. Among numerous studies by Biondi, see particularly: 'Crisi e sorti dello studio del diritto romano', *Università di Trieste, Ist. di storia del diritto, Conferenze romanistiche* 1 (1950) 11–38, reprinted in *Conferenze romanistiche*, ed. Maschi (1960) 1–36; 'Esistenzialismo giuridico e giurisprudenza romana', *Jus* 1 (1950) 107–18; 'Universalità e perennità della giurisprudenza romana', *Studi Koschaker* II (1954) 381–402; 'Aspetti universali e perenni del pensiero giuridico romano', *Jus* 7 (1956) 147–70; most recently, 'La fonction de la jurisprudence romaine dans la vie moderne', a paper read at the 1963 session of the Société d'histoire des droits de l'antiquité, and translated into Italian, *Riv. di diritto civile*, 10.1 (1964) 1–13. All these studies by Biondi are reprinted in his *Scritti Giuridici*, I (1965) 385 ff., and IV (1965) 845 ff.

12. By rigorous historical-critical methods, d'Ors, *Presupuestos* 27 ff.; cf. also Burdese, 'Considerazioni preliminari in merito allo studio del diritto romano', *Studi De Francisci* IV (1956) 359–72.

13. Quoted by N[icosia], *Iura* 8 (1957) 781, in his digest of Brasiello, 'La nuova visione del diritto romano ed i problemi ad essa pertinenti', *Idea* 12 (1956) 135–138 (translation of the author).

14. *Ius*, 17–29.

not possible to separate practice from theory; hence, the modern jurist seeks information regarding the positive rules and the legal system of the Romans just as much as he desires to understand the course of development of Roman law itself, the factors that brought about the peculiarities of a given legal institution.[15] 'Dogmatic study affords a cross-section, legal history a long-cut view of the law. To understand the law, one and the other are both necessary. Legal history without dogmatic data annexed thereto is not only non-juristic, it is non-scientific.'[16] One of the most recent text-books in Roman law for Italian students[17] notes that, in addition to (1) presenting the historical models of the legal institutions of the civil law systems of today, the study of Roman law affords (2) an opportunity of analyzing the views of the ancient jurists in order to acquire legal skills and to gain concrete knowledge of the principles which made up the legal system, and constitutes (3) an incomparable example of historical education for the jurist, in that it gives a picture of the development of legal institutions for a millennium of years, together with the social and economic factors which necessitated the changes in the structure of the institutions. A manual on the history of Roman law[18] in like fashion refers to the 'studio dogmatico' alongside of the 'studio storico' of the Roman law.[19]

Some teachers of the Roman law have undertaken to offset the lessening of interest in its study because of its necessary emphasis on the historical approach at the present time by urging the utility of the medieval and early modern development of the Roman law for an understanding of the rules and concepts of the present legal systems. Jolowicz has sought to balance utility and 'elegance', by which is meant that legal study which 'rises above the immediate necessities of practice, . . . to adorn what is conceived as a mercenary pursuit with the graces of useless learning'.[20] In his inaugural lecture at Oxford he showed that instruction in Roman law in England, at one time designed to aid the lawyer for practice in the ecclesiastical and admiralty courts, became – from the middle of the 18th century onward – an 'elegant' study thought to be essential for the understanding of the classics. As a matter of fact this study of the early Roman law was considered at the same time to be of practical value. Then, with the advances in scholarship on the historical side and the disappearance of the

15. *Quellen* 1–5, with further references, including his early 'Römisches Recht und Rechtsvergleichung', *Arch. RW Phil.* 14 (1920/21) 1–27, 106–45.

16. Wenger, *Quellen* 5.

17. Volterra, *Istituzioni* 10–11.

18. Scherillo – dell'Oro, *Manuale* 18–20.

19. Cf. also Gioffredi, 'Dommatica e sistematica nello studio del diritto romano', *SDHI* 18 (1952) 248–59.

20. Jolowicz, 'Utility and Elegance in Civil Law Studies', *LQR* 65 (1949) 322–26, at 322.

courts allegedly applying civilian rules, the 'elegant' study of Roman law came to prevail at the English universities. Jolowicz's plea was simply, '"Elegance" in the sense of exact historical scholarship must be maintained, but "utility" should not be sacrificed to it, and it is only when the Roman materials are seen in the light of subsequent "civilian" developments that their full value for the understanding of the law can be realized.'[21] He followed up this idea in his lectures and eventually there was published a treatise designed to expound the 'utility' of the Roman law, a treatise unfortunately left incomplete by his untimely death.[22]

In somewhat similar fashion, in his inaugural address at the University of Leiden, Feenstra deplored the excessive interest in early Roman legal history and its present scholarly efforts: the search for interpolations and the desire to reconstruct the legal institutions of the classical period of Roman law, the time of the late Republic and early Empire.[23] He would urge that the attention of the Romanist, and the student, be devoted to what he termed interpretatio multiplex, the search for the meaning of a legal text not only in the sense it had in the classical period as well as in the postclassical and Justinian epochs – the definition of these, infra – but also to discover its significance in the period after Justinian, particularly subsequent to the revival of the study of Roman law in 12th-century Europe. The purpose is not so much to emphasize the ties between the classical Roman law and modern law, as to present a more realistic picture of the history of the Roman law. The Romanist will gain from an understanding of the meaning of Roman legal texts in the meaning they had in the eight centuries back from the 20th to 12th just as he will form a clear understanding of their significance from their own date to the time of Justinian. True historical study is needed to give full value to his effort, to the historian as well as to the jurist.[24]

2. *The Value of the Study of Roman Law Comparatively*

§ 6 To a degree the study of Roman law for the purpose of elucidating the rules and principles, as well as the general concepts of the ancient legal

21. *Op. cit.*, 336.

22. *Roman Foundations of Modern Law* (Oxford 1957).

23. *Interpretatio multiplex. Een beschouwing over de zgn. Crisis van het Romeinse recht* (Zwolle 1953).

24. A recent inquiry in *Labeo* 17 (1971) 269 f., has brought a wealth of replies, almost entirely affirmative, to the question whether collaboration with scholars in other fields is pertinent to the study of Roman law, *Labeo* 19 (1973) 42–85, 185–95, summarized by Guarino, 339–52.

system – the so-called dogmatic purpose – may be seen as a comparative value of Roman law study. More particularly, however, many scholars – and particularly among the Anglo-American – have spoken of Roman law study in connection with the comparison of modern legal systems. The renowned Romanist who later turned his attention to comparative law, Rabel, suggested that there was no better approach to comparative law for American students than the data furnished by the evolution of the Roman law in medieval and early modern times.[1] The intensive development of categories among the Romans, Franklin maintained, afforded a needed contrast to the American emphasis on cases and the case-method in our law schools.[2] Stone carried on this idea, pointing out that the case-law system produces able technicians, but not jurists; that the introduction of the tools of other disciplines, and the tools of other legal systems, in particular those of the Roman law, would broaden legal education.[3]

There are some teachers of comparative law – in the comparison of present-day civil law systems with the Anglo-American law – who devote introductory lectures to the Roman law. Pringsheim, in his characterization of one of the great Romanists at the turn of the century, Otto Lenel, declares, 'The idea that one could work in comparative law without legal history, as is nowadays sometimes done, would be considered absurd by him.'[4] Lawson's lectures at Michigan also laid considerable emphasis on the value of Roman law for the study of the modern civil law by the Anglo-American jurist.[5] Indeed, in another paper, Lawson even suggests that the Roman law may be preferable to a modern civil law system for comparative law purposes.[6] The limited amount of source material available in the Roman law, he states, keeps the comparative study within bounds; furthermore, Roman law is the most purely legal law we have, for it is entirely apolitical and tied to no particular philosophical system in that portion which is pertinent to comparative law purposes. The role of Roman law in comparative law studies has been too firmly established to be en-

1. 'Private Laws of Western Civilization, I: The Significance of Roman Law', *Louisiana L. Rev.* 10 (1949/50) 1–14.

2. 'On the Problem of Teaching Roman Law', *J. Leg. Educ.* 5 (1952/53) 508–13; see also Wolff, *Roman Law* 4 f.

3. Stone, 'The Role of Roman Law in Teaching Law Comparatively', *Butterworths S.A.L. Rev.* 3 (1956) 119–26.

4. 'Römisches Recht in Freiburg nach 1900', *Aus der Geschichte der Rechts- und Staatswissenschaften zu Freiburg in Breisgau* (1957) 115, 122 [=*Abhandlungen* I 29, 35] (translation of the author).

5. *The Common Lawyer Looks at the Civil Law* (Ann Arbor 1953).

6. 'Reflections on Thirty Years' Experience of Teaching Roman Law', *Butterworths S.A.L. Rev.* 3 (1956) 16–21.

tirely swept away in the future; it appears to be in temporary eclipse, however, and I will not attempt to justify its study on that ground.[7]

A new value for Roman law, comparative in nature, has recently been put forth. Roman law is accorded a position of prominence by the Marxists as the antithesis to the legal structure of communist society. To Bartosek the Roman law was the legal order of slavery, a step forward with respect to the legal order of primitive society caused by a rather high level of productive forces.[8] The tie of the slave-system law of the Romans with capitalism is exploited by Reggi, and the way in which Marxist historiography can overcome the 'crisis' of the Roman law is explained.[9] Reggi's point of view was not convincing to either Biondi[10] or Tarello,[11] nor would it seem to be of value to the beginning student, because of its superficial treatment of the guiding principles of the law and its facile view of Roman legal history as a perpetual struggle between the classes. On the other hand, the assertion has been made that socialistic study of the Roman law does not overvalue the need of research into the sources nor attribute false concepts to the Romans, as the Pandectists did; it is in a better position to comprehend the economic role of law and of legal institutions, and to give meaning to the rich material on the basis of Marxist doctrine, thus to discover the true nature of the Roman state and the moving forces of its juridical evolution.[12]

3. *Ancient Legal History*

§ 7 There is another approach to Roman law that merits consideration. In his inaugural lecture at the University of Vienna, in 1904, Wenger proposed that Roman law serve as the basis for the study of 'antike Rechtsgeschichte', which may be literally translated 'ancient legal history'.[1] In the years follow-

7. The leading studies on Roman and comparative law are noted by Wenger, *Quellen* 10 n. 20.

8. 'Come si dovrebbe studiare attualmente il diritto romano', *Studi Arangio-Ruiz* I (1953) 317–38; the reply of Biondi, 'Diritto romano e marxismo', *Jus* 4 (1953) [=*Scritti* I 497–515], is devastating.

9. 'Materialismo storico e studio del diritto romano', *RISG* 8 (1955/56) 557–603.

10. 'Crisi del diritto romano e marxismo', *Jus* 8 (1957) 477–95 [=*Scritti* I 517–39].

11. 'Storiagrafia marxista, studi romanistici e crisi del diritto romano in una recente indagine', *Riv. Intern. di Filos. d. Dir.* 35 (1958) 457–67.

12. Vilaghy, 'Geza Marton: Lehrbuch der römischen Privatrechts. Institutionen (Bemerkungen zu einigen prinzipiellen Fragen der Romanistik)', *Acta Jurid. Acad. Hungar.* 2 (1960) 169–83.

1. *Römische und antike Rechtsgeschichte, Wiener Antrittsvorlesung* (Wien 1905).

ing he reiterated, defended and expanded his idea, culminating in the treatment accorded the topic in his magnum opus.[2] Briefly, Wenger's position was that Roman law might well be termed the 'melting-pot' of the legal systems of antiquity, to use the phrase I once employed.[3] The law of the Roman world-state (Imperium Romanum) encompassed within its bounds the ultimate expression of all the legal systems of the ancient Mediterranean and Near Eastern peoples. Roman law thus came into contact with all other known laws of ancient times. Law in the Roman state is thus the terminal phase of a legal development stretching back through the millennia to the very beginnings of Indo-European, Mesopotamian and Egyptian societies. Consequently Roman law may serve as a common ground for the study of ancient legal systems, as the most extensive and the best-known in this category. Although it would be erroneous to attempt to reconstruct *an* ancient law – as it would be to posit *an* ancient language – the ever-increasing researches into the many other legal systems of antiquity may find their focal point in the Roman law. To determine the extent to which the legal systems of the subject peoples influenced the Roman law, or in turn gave way in the face of Roman law, we must thoroughly understand the foreign legal systems. And we can do this through the tool of the Roman law. Ancient legal history is to be recognized as a sector of universal legal history.

It was in great part due to Mitteis' epoch-making study on empire law and local law[4] – a topic to which we will return – that Wenger came to advocate the idea of ancient legal history. Yet, some years later, Mitteis expressed doubt as to the value of Wenger's proposal.[5] The extant sources of the other legal systems of antiquity, he declared, were too sparse to utilize for scientific study. Furthermore, ancient legal history could never be more than a part of comparative jurisprudence; thus, Roman law was not the basis for study of ancient legal history, but merely one complex to be compared with one or another legal system, ancient or modern. Another

2. *Quellen* § 12, pp. 27–33. The earlier studies, and comments thereon by others, to 1947, in note 1, p. 27. Wenger's position with respect to the writings of others in the area of ancient legal history was set forth in successive numbers of his *Juristische Literaturübersicht*, in *Arch. Pap.* 9 (1930) 107–18, 258–98; 10 (1932) 102–41, 281–90; 12 (1937) 139–58, 248–90; 13 (1939) 169–76, 279–82; 14 (1941) 237–38; 15 (1953) 195–222. An English version of his views, 'Ancient Legal History', *Harvard Tercentenary Publications: Independence, Convergence and Borrowing in Institutions, Thought and Art* (Cambridge 1937) 62–79.

3. Schiller, *Georgetown L. J.* 21 (1933) 147, 151 f. [= *American Experience* 10, 14f.].

4. *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig 1891; repr. with preface by Wenger, Leipzig 1935).

5. 'Antike Rechtsgeschichte und romanistisches Rechtsstudium', reprinted from *Mitteil. Vereins. d. Freunde d. Humanist. Gymnasiums Wien* 18 (1918).

noted Romanist, Kübler, pointed out that it was difficult enough to justify the inclusion of Roman law in the curriculum of a (German) university, without the added burden of ancient legal history.[6] Koschaker, at first,[7] was of the opinion that universal legal history, of which ancient legal history was a part, was not an acceptable field of research, and that comparative law studies were alone satisfactory; in a later commemorative study to Wenger, he admitted the value of such study.[8] An excellent summary of the pros and cons was made by De Zulueta,[9] in which he raised the question whether a consideration of Roman law in its relation to medieval legal history would not be of more value to the student than the ancient legal history which Wenger had advanced.

On the other hand, a favorable reception to ancient legal history was accorded by a number of scholars from the very start.[10] In the course of time it became a regular unit in the course of legal study in Germany. It may have had some influence in the framing of the first-year course in the French universities – history of institutions and social events from the earliest beginnings to the Carolingian epoch – which recently was part of the required study. Two extensive studies attempted to extend the ambit of ancient legal history, giving greater prominence to the methodology to be employed in the study of the non-Roman legal systems of antiquity.[11] Although interest in the subject may appear to have waned in recent years,[12] the idea of drawing together the results of research in the various legal systems of ancient times into one easily accessible survey has been brilliantly accomplished, in ever-expanding fashion, in the reports periodically assembled by Seidl, one of Wenger's leading students.[13]

Inasmuch as there will not be an opportunity to enter to any great extent into the field of ancient legal history or of ancient non-Roman legal systems in this work, the attention of the student is called to some of the

6. Kübler, in his review of Wenger, 'Der heutige Stand der römischen Rechtswissenschaft', *Münch. Beitr.* 11 (1927), in *SZ* 48 (1928) 659–62.

7. *SZ* 49 (1929) 188, 197 n. 1; cf. also his remarks in *Krise des römischen Rechts, cit. supra,* § 4 n. 1, 43 ff.

8. *Festschrift Wenger* I (1944) 1, 7ff.

9. 'L'histoire du droit de l'antiquité', *Mélanges Fournier* (1929) 787–805.

10. Reff. in Wenger, *Quellen* 27 n. 1.

11. Lautner, 'Die Methoden einer antik-rechtsgeschictlichen Forschung', *Z. vergl. RW* 47 (1933) 27–76; Praag, *Problemen der antieke Rechtsgeschiedenis* (Amsterdam 1946).

12. Kaser, review of Wenger, *Quellen*, in *SZ* 71 (1954) 403, 406 ff.; Wolff, 'Roman Law as Part of Ancient Civilization; Reflections on Leopold Wenger's Last Work', *Traditio* 11 (1955) 381–94. Cf. also, Archi, 'Storia del diritto romano e storia dei diritti antichi da Wenger a noi', *SDHI* 37 (1971) 289–305.

13. In spite of its title, 'Juristische Papyruskunde', the survey covers the whole field of legal history. The report has been published regularly in *SDHI* from vol 1 (1935) to the present.

most significant works in these areas. Although now somewhat out of date, the surveys in English in the group of articles under the heading 'Law' in the Encyclopedia of Social Sciences should be noted.[14] Seidl's text-books on Roman law and legal history are, in fact, treatises on ancient legal history.[15] He is also responsible for the works which portray Egyptian legal history from the earliest times to the close of the Roman epoch.[16] Among the works concerned with the earliest legal systems of the Near East are collections of Babylonian and Assyrian laws, and Hittite laws with English translations and commentary.[17] There are also extended studies on these early legal systems by San Nicolo and Volterra.[18] For the Jewish law there is Rabinowitz[19] and Powis Smith[20] and, specifically, the legal institutions preserved in the documents of the Jewish colony in Elephantine, Egypt, of the 6th century B.C.[21] There exist a number of works on Greek law in English, by Vinogradoff, Calhoun, Bonner and Smith,[22] with a score of other monographs cited by Wenger.[23] Recently there is the extensive work by Pringsheim devoted to the Greek and Hellenistic law of sale,[24] and more general treatments of Greek law by Jones and Biscardi.[25] For the legal systems

14. 9 (1933) 202, 206–35, 263–65, incorporating: 'Ancient Legal History', by Wenger; 'Egyptian', by Seidl; 'Cuneiform', by Koschaker; 'Jewish', by Gulak; 'Greek', by Weiss; and Hellenistic and Greco-Egyptian', by Schiller.

15. *Römisches Privatrecht* (2nd ed., Köln 1963), and *Römisches Rechtsgeschichte und Römisches Zivilprozessrecht* (3rd ed., Köln 1971).

16. *Einführung in die Ägyptische Rechtsgeschichte bis zum Ende des Neuen Reiches* (2nd ed., Glückstadt 1951); *Ägytische Rechtsgeschichte der Saiten- und Perserzeit* (Glückstadt 1956); *Ptolemäische Rechtsgeschichte* (2nd ed., Glückstadt 1968); *Rechtsgeschichte Ägyptens als römische Provinz* (1973).

17. Driver and Miles, *The Assyrian Laws* (Oxford 1935); Driver and Miles, *The Babylonian Laws*, 2 vols. (Oxford 1955); Neufeld, *The Hittite Laws* (London 1951). For the latter see also Friedrich, *Die hethitischen Gesetze* (Leiden 1959).

18. San Nicolo, *Beiträge zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen* (Oslo 1931); Volterra, *Diritto romano e diritti orientali* (Bologna 1937), and *Les rapports entre le droit romain et les droits de l'Orient* (Bruxelles 1955).

19. *Jewish Law; its Influence in the Development of Legal Institutions* (New York 1956), to be used with caution since it is excessively partial.

20. *The Origin and History of Jewish Law* (Chicago 1960).

21. See Yaron, *Introduction to the Law of Aramaic Papyri* (Oxford 1961); Porten, *Archives from Elephantine* (1968).

22. Vinogradoff, *Outlines of Historical Jurisprudence*, II: *The Jurisprudence of the Greek City* (Oxford 1922); Calhoun, *Introduction to Greek Legal Science* (Oxford 1944); Bonner and Smith, *The Administration of Justice from Homer to Aristotle*, 2 vols. (Chicago 1930, 1938).

23. *Quellen* 31 n. 27.

24. *The Greek Law of Sale* (Weimar 1950).

25. J. W. Jones, *The Law and Legal Theory of the Greeks* (London 1956); Biscardi, *Profilo storico di diritto greco* (Siena 1961); Harrison, *The Law of Athens*, I: *The Family and Property*, and II: *Procedure* (1968–71).

with which Rome actually came into contact, the most extensive knowledge is to be obtained from the papyri of Greco-Roman Egypt, on which the standard treatise is that of Taubenschlag.[26] The Coptic documents, from the very end of Roman rule in Egypt, afford a curious mixture of Greco-Roman and Egyptian (enchoric) practice.[27] Finally, the recent discovery of documents in the Judean desert from the time of Roman sovereignty[28] have provided insight into the legal practices of another Roman province, already affording opportunity for comment by experts in the Roman-Jewish law.[29]

4. *Courses, Materials and Methods*

§ 8 Some ten years ago the editors of *Labeo* sent a questionnaire to some 300 possible teachers of Roman law, seeking an answer to six questions, framed somewhat as follows: (1) Is preliminary modern conceptual training a prerequisite for the study of ancient Roman law? (2) Is contemporary conceptual understanding sufficient for the reconstruction of the Roman law, or are the concepts only to be framed from results reached? (3) Is Roman law to be studied alone, or in the framework of ancient legal history? (4) To what extent is Roman public and private law useful for the preparation of the modern lawyer? (5) Is study of legal institutions sufficient, or is exegesis of the texts also recommended? (6) In the course on legal institutions, is it necessary to limit this to the historical development of institutions, or is it preferable to frame the course in the light of current law, particularly stressing Roman legal institutions for which there exist corresponding modern institutions? Forty-nine replies were received and published,[1] including seventeen Italian professors, seven German, four Austrian, three British and three Spanish, and one or two French, Belgian, Dutch,

26. *The Law of Greco-Roman Egypt in the Light of the Papyri* (322 B.C. – 640 A.D.) [2d ed., Warsaw 1955]. Cf. also his 'Introduction to the Law of the Papyri', *AIRIDA* 1 (1952) 279–326.

27. Steinwenter, *Das Recht des koptischen Urkunden* (Handbuch der Altertumswissenschaft, X Abt., 4 Teil, Bd. 2) (München 1955); on the work, see Schiller, 'A Monograph on the Law of Coptic Documents and Survey of Coptic Legal Studies, 1938–1956', *Z. vergl. RW* 60 (1957) 190–221.

28. Benoit, Milik and De Vaux, *Discoveries in the Judean Desert*, II: *Les grottes de Murabba'at*, 2 vols. (Oxford 1961).

29. Yaron, 'The Murabba'at Documents', *J. Jew. Stud.* 11 (1960) 157–71; Volterra, 'Nuovi documenti per la conoscenza del diritto vigente nelle provincie romane', *Iura* 14 (1963) 29–70.

1. 'Studio e insegnamento del diritto romano. Inchiesta', *Labeo* 2 (1956) 48–84, 187–218, 327–51, 453–54.

Swiss, Greek, Jugoslav, Polish, Hungarian, South African, and one American.[2] Most professors followed pretty much the leads indicated, and the diversity of opinion accorded with the divergence of views which have been outlined in the two previous sections. It would serve no purpose to attempt to generalize from the results. As one commentator on the inquiry implies, the value of teaching Roman law seemed to be clearly connected with instruction in modern law; to his mind the historical study of law is quite distinct from any practical utility.[3]

What is quite clear from the results of the questionnaire is that the teachers of Roman law are largely individualists, seeking their own stated aims in the courses they profess, and organizing their lectures or collecting their materials to accomplish these ends. Though the general content of the courses is more or less fixed among the universities on the continent, this does not prevent divergence. In Italian universities the basic courses were three in number:[4] (1) History of Roman law, to present and critically evaluate, in the frame of the history of the Roman state, those aspects of the legal order, public and private, which will prepare for subsequent systematic study of the Roman law; (2) Institutions of (private) Roman law, an elementary systematic-historical treatment of the private law for beginners in law study, following the sequence of the subject matter of modern law as far as possible; (3) Roman (private) law, deeper study of single parts of the vast material of the Roman private law, to afford immediate contact with the sources, primarily the Digest of Justinian. Supplementary instruction exists in (4) Roman public law, again systematic-historical treatment, but with no close connection to institutions of modern public law; (5) Exegesis of the sources of Roman law, the historical-critical interpretation of the sources, with emphasis on the criteria of interpolation,[5] culminating in a practice critical edition of a text. Courses related to the study of Roman law, generally in the Faculty of Letters, may include Epigraphy and juridical papyrology, History of ancient legal systems, Latin and Greek language and literature, and Ancient History.

In the French universities during the last half of the 19th and the first half of the 20th centuries, two years of instruction in Roman law were required, a first year on legal institutions, and a second year devoted to the subject

2. The latter was Ehrenzweig, who states, pp. 65–66, that since Roman law was only taught at one law school – Columbia; I was not inclined to reply, since none of the six queries seemed pertinent to me – he would deal with Roman law as an introduction to a comparative law or a civil law course, or in a suggested introductory course of lectures, described below.

3. Bove, 'Il diritto romano in una recente inchiesta', *Dir. e Giurispr.* 74 (1959) 161–69.

4. Described recently, for example, by Guarino, *Storia* 42–44. For the reform in legal studies in Italy, see Guarino, *Labeo* 6 (1960) 301–05.

5. See §§ 28–31.

of obligations in its relation to the French law. Then, in 1954, a year course in the history of institutions and social events from the earliest ages of civilized man through the Carolingian epoch, and three single-semester courses in the second, third and fourth year on the Roman and ancient French law of property, obligations and matrimonial regime, donations, and succession, were substituted.[6] As a result, Roman law accounted for but a small part of the historical study in legal education in France. A desire to introduce a new 'licence' (degree) led to a further series of changes in 1960–62.[7] Roman law accounts for only one of the five semester courses of historical study which are required. The fate of Roman law at the French universities cannot be predicted at this time.

Since the war the amount of time devoted to Roman law at German universities has substantially decreased. Pringsheim reported on its status at some sixteen of the universities in 1955.[8] A three-hour course in Roman legal history was given at nine of the institutions, at the remainder one hour more or less per week. In half the universities this was a first-semester course. In addition, Roman private law (Institutions) was a required course of six hours at one university, five hours at six others, four hours at seven, and three hours at four. Exegesis in the Digest was a popular course at eleven universities, while seminars in various subjects were offered at eight institutions. From this it can be seen that inroads have been made by other subjects, yet Roman law – legal history and institutions, with some attention paid to textual criticism and particular interests – is still a part of German legal education

There is a long tradition of Roman law teaching at Oxford and Cambridge, of more recent date in the other universities of England. The Institutes of Gaius and Justinian – see the next chapter – usually provide the subject matter for the introductory course, and one or more substantive law topics – sales is a favorite – the basis for intensive study, frequently from a comparative point of view. However, the content and the method depend to a large extent on the individual professor, readers and lecturers. There has been constant attack upon the prominence given to the study of Roman law in university legal training,[9] but it remains a significant part of the B.C.L. degree. Recently, Thomas has suggested a new type of course, a one year course to give 'an essentially factual exposition of the general structure of Roman law, followed by a study in some detail of a

6. Cardascia, *Iura* 7 (1956) 643–44; Gaudemet, *Labeo* 2 (1956) 126–27.
7. Cardascia, *Iura* 14 (1963) 216–18.
8. *SZ* 72 (1955) 526–28.
9. See, e.g., Hanbury, 'The Place of Roman Law in the Teaching of Law Today', *JSPTL* 1931, 14–25.

particular topic on a comparative basis with a similar branch of English law'.[10]

In the United States Roman law has frequently been included, and quite successfully, in the curriculum of the undergraduate college. Professor Morey, whose remarks were cited in § 5, was speaking of such a course. Hadley, at Yale, was well known for his course in Roman law,[11] and equally popular was Coleman-Norton at Princeton[12] and Berger at the College of the City of New York.[13] But Roman law in the Classics or History Departments as an undergraduate course serves purposes quite distinct from a course in a law school. There has been no lack of effort to introduce Roman law into the law school curriculum and no dearth of articles seeking to justify its inclusion, for all the reasons which have been indicated earlier, and others in addition.[14] This effort extends in time from the era when the attorney taught his clerk right up to the present.[15] To a great degree the value of Roman law in comparative law study has been primarily stressed in recent years,[16] replacing the so-called 'practical' value of the contribution of Roman law to the American law.[17] There are those, also, who point to the conceptual nature of Roman law as a foil to Anglo-American case-law. As an instance of this, reference may be made to Ehrenzweig's proposed lectures on Roman law as the introduction to the conceptual ideas of world jurisprudence.[18] First, a few hours devoted to the history, the elementary concepts and the system of the Roman law, then fourteen of the twenty lectures to be devoted to a presentation of the Roman law of obligations. Ehrenzweig believes that, in this fashion, a sys-

10. Address at the 1° Inter-American Cong. of Roman law, *Romanitas* 9 (1971) 377, 389–90.

11. Hadley, *Introduction to Roman Law* (1873, repr. 1931), reproduces his course of lectures.

12. Cf. his remarks, 'Why study Roman Law?', *J. Leg. Educ.* 2 (1949/50) 473–77.

13. He used his *Encyclopedic Dictionary* as the basis of his lectures.

14. Most of the references are to be found in Caes, *Collectio* 13/14 (1964) 616, *s.v.* ius Romanum – methodus.

15. Among a score or more articles, attention may be called to two anonymous notices, *Albany L. J.* 3 (1871) 297–99 and 6 (1872) 245–46; and to articles by Pincoffs, 'The Object and Value of the Study of Roman Law', *Amer. L. Rev.* 15 (1881) 555–72; Lobingier, 'The Value and Place of Roman Law in the Technical Curriculum', *Amer. L. Rev.* 49 (1915) 349–73; Cassidy, 'The Teaching and Study of Roman Law in the United States', *Georgetown L. J.* 19 (1930/31) 297–305; Franklin, 'On the Problem of Teaching Roman Law', *J. Leg. Educ.* 5 (1952/53) 508–13; Stone, 'The Role of Roman Law in Teaching Law Comparatively', *Butterworths S.A.L. Rev.* 1956, 119–26; Kessler, 'On the Value of Roman Law for Twentieth-Century American Law Students', *J. Leg. Educ.* 12 (1959/60) 377–95.

16. E.g., Cassidy, Franklin, Stone, note supra.

17. E. g., Pincoffs, Lobingier, n. 15 supra; see also Sherman, *Roman Law* I 1 ff.

18. 'A Common Language of World Jurisprudence', *U. Chicago L. Rev.* 12 (1945) 285–94; the idea is renewed in his contribution to *Labeo* 2 (1956) 65–66.

tematic comprehension of our own law may be furthered, Roman legal terminology may be useful, and 'a conceptual system of unique methodological value would be afforded'. Some such scheme may now be used in several of the introductory courses in comparative law or legal history in this country. But this subject matter is actually a mélange of Justinian, medieval, early modern natural law, and Pandect law development rather than Roman law, in the strict sense of the term. Indeed, there are only two or three courses devoted wholly to Roman law in American law schools, and to the best of my knowledge, all except the course at Columbia exphasize the comparative aspect of the conceptual elements of Roman legal institutions.[19]

5. Roman Law at Columbia University School of Law

§ 9 The course in Roman law at Columbia has evolved over the past forty-three years, but from the very start it has directed its emphasis to what has been denominated 'mechanisms of development', that is, those factors and those forces which made of Roman law a highly refined technical system capable of meeting the requirements of the Roman 'world' society at the height of its power and prominence, i.e., during the time of the late republic and early empire. For it was during this period, and this period alone, that Roman law reached the pre-eminence which has led it, along with Anglo-American law, to be reckoned as the world's most highly esteemed legal system.

This value of Roman law is already reflected in the words of Monroe Smith, my predecessor at Columbia, uttered in an address more than seventy years ago:

> I trust, in closing, that I may be permitted to take a further liberty with my theme, and to indicate that a careful study of Roman legal history will be of great service to the Englishman or American who desires to comprehend his own legal history. I lay little stress on the point that we may thus recognize what has been borrowed; I desire chiefly to insist upon the point that we may thus better appreciate the true character of English legal history as an independent development. Furnished with a knowledge of the Roman law and of its development, the English investigator will more

19. The survey by Edwards, *International Legal Studies: A Survey of Teaching in American Law Schools, 1963–1964* (1965), Appendix A, lists Roman Law or Roman and Comparative Law at seven law schools in the United States. The most recent list of schools offering Roman law is contained in the *Report of the Teaching of Legal History in American Law Schools*, by J. H. Smith, chairman, Legal History Section, Association of American Law Schools, dated Nov. 20, 1973.

accurately gauge by comparison the excellencies and the defects of the English law. He may not find, as is commonly claimed, that the Roman law is more scientific, – a claim which I take to mean that its broader generalizations are more correct, – but he will certainly find that the Roman law is more artistic. The sense of relation, of proportion, of harmony, which the Greeks possessed and which they utilized in shaping matter into forms of beauty, the Romans possessed also, but the material in which they wrought was the whole social life of man. There was profound truth in the saying of the Roman jurist that law was the 'ars boni et aequi'.

The comparative student will find also that while the English law has developed in certain directions further than the Roman, the Roman law in certain other respects had attained, at the close of the republican period, a development which seems to go beyond ours. This is true, for instance, in the whole field of commercial dealings. The great regard paid in all commercial transactions to good faith and the instincts of an honest tradesman, and in particular the abandonment by the Romans, two thousand years ago, of the primitive and dishonest doctrine of caveat emptor, – a doctrine which the English law still unaccountably retains, – point out lines along which, I believe, our own law is bound to develop.

Best of all, the comparative student will learn to distinguish between that which is peculiar and therefore accidental in both systems and that which is common to both and therefore presumably universal. It has long been the hope of some of the greatest modern jurists, both in English-speaking countries and in Europe, that by strictly inductive study it may be possible to discover a real instead of an imaginary natural law. The corresponding hope of the legal historian, that it will in time be possible to formulate the great laws that govern legal development, is not, I believe, an idle dream; and I am sure that the minute comparative study of Roman and Anglo-American legal developments will carry us further toward such a goal than any other possible comparison.[1]

The same value was expressed by the leading English Romanist in the early years of this century. Buckland pointed out the similarity between the Roman law and the Anglo-American in establishing legal doctrines without legislation and within the framework that already existed; as a result, the ways of legal thinking of the groups responsible for the development of law are very much the same.[2] There was never, he says, any 'logical' classical law,

1. 'Problems of Roman Legal History', *Congress of Arts and Science*, Universal Exposition, St. Louis, 1904, II (1906) 315–28, at pp. 327 f.; also in *Columbia L. Rev.* 4 (1904) 523–40, at pp. 539 f.

2. *Equity*, 117.

for it was too much an age of rapid development. No other legal system gives us as good a picture of lawyers operating within a given set of rules to make law satisfy the needs of an advancing civilization. Like the Anglo-Saxons, the Romans had the gift of administration and of being administered. The pax Romana made the law; with the end of pax came the end of the law.[3] Four decades ago, Pringsheim emphasized the relation between the Roman law of the classical period and the English law.[4] It is a natural relationship stemming from similarity of national characteristics; the national attributes which enabled the English and the Romans to govern the world are the same as those which formed their law. Lord Bryce, Pringsheim notes, also wrote of the methods of law-making in Rome and in England, but our ideas of the nature of the classical law have been drastically altered in the decades since Bryce's essays appeared.[5] When Roman law and English law were compared in the past, the former was the law as expressed in Justinian's codification; the comparison was necessarily inaccurate. The spirit of the Roman law in the classical epoch is related to the spirit of the English law; that of the Justinianian era is almost in opposition to the English spirit.

Some Romanists on the continent have also recognized the peculiar characteristics of the Roman law of the classical period and its pertinence to the law of today. Biondi abjures Pandect study or a modern conceptual aproach[6] for the knowledge of Roman law calls for a division into its various epochs as well as into its various juridical complexes.[7] Ehrlich had recognized the feeling for realism as the salient characteristic of Roman jurisprudence, behind the creative force of legal norms and principles in classical times.[8] De Francisci, in the introduction to his history,[9] spoke of the Roman jurists of the classical period as masters with little love for general theories but possessing an acute sense of reality, of the structure and the practical scope of every institution, who could direct the development thereof without altering the organic or original nature of the concept; prompt to abandon it, if it could not be bent to accommodate new purposes, in order to create new methods responsive to different situations, to altered interests, to the

3. See further, Schiller, 'The Role of Roman Citizenship and Roman Law in the Pax Romana', *Festgabe Leschnitzer* (1961) 121–30.

4. 'The Inner Relationship between English and Roman Law', *Cambridge L. J.* 5 (1935) 347–65 [= *Abhandlungen* I, 76–90]. This is also stressed by Peter, 'Römisches Recht und Englisches Recht', *Sitzb. Frankfurt* 8 (1969) 55–100.

5. *Studies in History and Jurisprudence* (1901), Essays XIV and XV.

6. *Prospettive* 88–91.

7. Infra, chaps. VII–XI.

8. *Principles of the Sociology of Law*, trans. Moll (1936) 264 ff.

9. *Storia* I (1st ed.) 20 f.

urgency of new needs. He follows this up with an extended discussion of the similar 'mechanisms of development' in the English law. Siber states[10] that the focus of Roman law study today must be the classical law, which Schulz chooses to portray[11] because it is the center of any science of Roman law, from which all inquiries must start, a homogeneous, original and even unique system of law.[12]

The focus of a course which seeks to portray the forces which fashioned the universally renowned Roman law, which bears the closest resemblance to the judge-made and lawyer-developed Anglo-American law, is thus centered upon the era known as the period of the classical Roman law, roughly the epoch between 150 B.C. and 250 A.D.[13] Elements important in the development of this law during the preceding centuries must necessarily be taken into account, but the course of legal development in later ages, the so-called post-classical and Justinianian periods, is not included herein, because in the view of the author it is not a legal system which merits the attention of the Anglo-American lawyer. There are those who will say that this is a truncated version of Roman law; that it is inadequate because: (1) it fails to draw attention to the almost total bureaucratization of the law that occurred in the later times; (2) it omits all consideration of that newly discovered field of endeavor, vulgar law; (3) it passes by that crucial event, the codification of the Roman law under Justinian, which gave the impulse to the development of modern civil law and, at the same time, preserved for us the materials which made up the classical law. In answer thereto it can be said: (1) a bureaucratized legal system, a Byzantine Roman law, is not a legal system which has any appeal for the American way of life; (2) vulgar law, that is, the legal rules reduced to non-professional simplicity to accord with popular practice,[14] is of no particular interest to the American law student, and there is no more occasion to devote time to Roman vulgar law than to popularized, largely debased, legal principles which may characterize a period of professional debility in any legal system;[15] (3) the medieval and modern development of Roman law into the civil law systems is a wholly distinct subject, and as to the techniques of codification, interesting as those

10. *Röm. Recht* 2.

11. *Classical Law* 1 f.

12. Schulz abstains from comparing classical law with the law of other peoples, for the unique character of the Roman law renders such comparison unprofitable and even confusing (page 5). There is no direct comparison in this volume, either.

13. The exact delimitation of the classical period is presented infra, chap. IV, § 44.

14. For a brief statement of Roman vulgar law, see Levy, *Vulgar Law* I (1951) 1–17.

15. This point of view has been expressed earlier by the author, in response to a questionnaire on the place of vulgar law in Roman law study, Schiller, *Labeo* 6 (1960) 365–67.

of the 6th century may be, they certainly have no pertinence today.[16]

The epoch of the law upon which emphasis is laid having been determined, the materials which will serve the ends desired must be selected. A history of Roman law from the earliest beginnings to the end of the classical epoch would be much too comprehensive for a one-semester course. The origins of Roman legal institutions, the details of the organs and the institutions of public law are outside the interest of the lawyer. Intensive study of a number of legal institutions of the classical law might, indeed, afford insight into those forces and factors of development to reveal the way Roman law was fashioned. The American law student, however, needs an introduction into the subject before being plunged into the complexities. The contents of this volume seek to present that introduction. The first four chapters lay the groundwork for study and research and occupy little time in classroom discussion. Chapters V and VI are devoted to a presentation of the essentials of the archaic and pre-classical law needed for an understanding of the central core of the course. Chapters VII to XIII comprise somewhat detailed treatments of the forces of development and the practical and theoretical aspects which made Roman law a great legal system.

The specific period of interest, the subject matter of the course have been outlined; there remains the method of instruction. The normal course in Roman law, on the continent and in England, consists of a series of lectures. Supplemental thereto are the smaller sections and seminars devoted to the exegesis of individual texts. Neither of these methods of instruction is satisfactory for American law students. Law professors do not lecture! Law students cannot understand Latin! These are not absolute truths but certainly reflect the generally accepted views. From the very start of this course, therefore, materials were provided;[17] the case-book – now more often, cases and materials – was the model. The materials used were necessarily the first-hand reports, the sources, of the Roman law: the legal texts found in the corpus of Justinian or elsewhere in juristic writings or compilations; then also, legal statements in non-legal writings; public and private documents preserved in inscriptions or on papyri. The originals were primarily in Latin, a few in Greek. But as Lee has pertinently said,[18] many persons have gotten a good deal out of the Bible without knowing Hebrew or Greek. The book,

16. Others differ; codification in ancient legal systems was a topic at the XIth International Session of the Société d'Histoire des Droits de l'Antiquité, see the papers in *RIDA* 3rd ser., 4 (1957).

17. The first collection was Yntema and Schiller, *Source Book of Roman Law* (New York 1929), compiled by the latter author.

18. Quoted by Lawson, *Butterworths S.A.L. Rev.* 3 (1956) 16, 20.

then, is primarily a collection of extracts from the original sources, in translation, to afford classroom discussion. There exist a considerable number of collections of source materials for instructional purposes, in the original languages or in translation – some in English – but as might be expected, each was compiled to meet its compiler's aims. Some are collections of single texts to afford critical introduction to particular segments of the law;[19] most are attempts to cover the substance of the private law by extracts from the Corpus Iuris.[20] Needless to say, such collections do not meet the demand here. The selection of materials in this volume has been made to present the most pertinent texts upon the matters destined for discussion; the author and the title of the work or fragment from which the extract derives is given, in Latin, to afford some acquaintance with the sources. The text itself is literally translated; ambiguities are purposely retained.

The texts form the heart of the materials. But since discussion and exposition of the law by others is based on these very same texts, an attempt has been made to present, in brief form, the views of various scholars as to the meaning and significance of the texts. In many cases the same texts give rise to contradictory views; at times an entirely new theory is advanced, in the face of decades or even a century of communis opinio, accepted opinion. Research and discussion of these very same texts has been going on since the end of the 11th century; reports of secondary discussion are limited to two or three recent comments. A few more references may be indicated in the notes. But the student may be alarmed by what he considers excessive annotation, particularly to articles in foreign languages. It should be stressed that the student, in his first course in Roman law, is not expected to do more than carefully study and prepare the materials in this volume, supplemented by the outside reading of the standard text-books and the few articles which have been assigned. This will form the basis for classroom discussion. The volume, however, is intended to serve as a desk book for further research in Roman law. The references not only contain the citation of the book or

19. E.g., Zitelmann, *Digestenexegese. Zwanzig Fälle aus dem römischen Recht* (Berlin 1925); Schulz, *Texte und Übungen im römischen Privatrecht* (Bonn 1925); Betti, *Esercitazioni romanistiche su casi practici*, I: *Anormalità del negozio giuridico* (Padua 1930); d'Ors, *El esclavo prestado con una flauta* (Santiago 1945).

20. Arangio-Ruiz–Guarino, *Breviarium iuris Romani* (5th ed., Napoli 1974); Kübler, *Lesebuch des römischen Rechts* (3d ed., Leipzig 1925); Levet–Perrot–Fliniaux, *Textes et documents pour servir à l'enseignment du droit romain* (Paris 1931); Zevenbergen, *Texten ten gebruike bij de studie van het romeinsche recht* (Utrecht 1947). In translation: Düll, *Corpus Iuris. Eine Auswahl der Rechtsgrundsätze der Antike* (2d ed., München 1960); Pound, *Readings in Roman Law* (Lincoln, Nebr. 1906); Sherman, *Epitome of Roman Law in a Single Book. A concise Collection of almost 700 selected Texts* (New York 1937); Scharr, *De Romanorum iure. Römisches Privatrecht, lateinisch und deutsch ausgewählt, übertragen, erklärt und eingeleitet* (Zürich 1960); Hausmaninger, *Casebook zum römischen Sachenrecht* (Wien 1974).

article from which the ideas of the authors noted have been gained – the hope is that these have been accurately reflected – but also call attention to the recent books or articles which offer a starting point for further research. The whole of chapter III is directed to the student who wishes to carry on, either on his own or under the guidance of a professor. A reading knowledge of Latin, together with German, Italian and French – ancient Greek is needed in some fields – opens the door to the oldest, and still one of the most exciting, areas of legal research.