St. John's Law Review

Volume 2, December 1927, Number 1 Article 24

Handbook of Roman Law (Book Review)

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The emphasis is placed throughout upon the system of procedure as a whole, the material is in the nature of a preliminary or introductory course in pleading and practice. The footnotes are carefully prepared to accomplish the purpose intended. They provide food for study, abundant references to the literature of the subject, and many suggested problems, with citations to authorities where such problems are discussed or treated.

It would seem that the ancient method of approaching the subject of Common Law Pleading has served its usefulness. Perhaps it was a mistake from the first to place before first year law students the material which had become almost conventional, but which was at all times highly technical, confusing and difficult to comprehend. In any event, Professor Magill's experiment is bound to provoke discussion, to lead to a reconsideration of many of the principles of legal education which have been for a long time taken for granted, and for these reasons apart from others intrinsic to the book itself, it is a forward step in the right direction.

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HANDBOOK OF ROMAN LAW. By Max Radin. St. Paul: West Publishing Co., 1927, pp. xv, 516.

One would have thought that the market for the sale of a hornbook on Roman Law was too sparse to draw the business nose of the West Publishing Company. At least, one might have hoped so. Specifically, one might have hoped that when a civilian scholar of the unquestioned eminence and learning of Professor Radin at last set himself the task of preparing an institutional work for American students, he had done so free of the trappings of the Hornbook Series. A plan that requires every section, in itself a tightly packed mass of material, to be prefixed by a heavy type black-letter summary of the context thereof, too often leads to absurdity.

Take for example, Dr. Radin's discussion of the great jurists of the classical period. His treatment of the subject for a page and a half, is scanty but considerably informative. His black-letter heading, however, reads like an epitaph:

"(1) Gaius, known only by his extant manual, The Institutes.
(2) Cervidius Scaevola, author of a Digest.
(3) Papinian, brilliant and profoundly influential.
(4) Paul, ingenious and subtle.
(5) Ulpian, eminent as a critical systematizer.
(6) Modestinus, learned commentator. (p. 80.)

The Roman institutional treatises expound the law under the headings adopted by Gaius and followed in the Justinian Institutes,—persons, property and procedure. Blackstone, it will be remembered, uses the same division, with the addition of criminal law. His division was of rights of persons, rights of things, private wrongs (a procedural treatment, because the abstraction of right from remedies is a phenomenon of matured law), and public wrongs (criminal law). Dr. Radin adopts the classification of neither wholly.

After outlining Roman history generally from the earliest times to the fall of the Empire, he proceeds to a history of Roman law, to so

large a degree inevitably, the history of Roman legal procedure. Knowledge of the steps to be taken when a wrong is done, the *modus operandi* of the legal order, is a wise precursor to the systematic study of any legal system and almost a necessary one to the study of Roman law. Thereafter, the author follows in broad outline, Justinian. The law of persons is dealt with summarily. The law of obligations consumes nearly half the book and represents a thorough-going analysis of Roman concepts of contract and tort liability. Where uncertainty exists, where material for a conclusion is sparse or inadequate, the author states so frankly.

The treatment of corporations and trusts, together with partnership in a single chapter, will surprise some minds of classical mould. But, doubtless, it is to be attributed to modern notions of a functional classification of the law. Again, Dr. Radin's tendency to translate Roman concepts into English ones, sometimes results in a translation of the Latin words rather than the Roman idea. Thus, "abstract negligence," "concrete negligence," "special diligence," "simple diligence" are merely so many words. They fail palpably to convey the associations attached to *"culpa levis in abstracto," "culpa levis in concreto," "exacta diligentia," "diligentia quanti in suis rebus, adhideri solet"* (pp. 191-194).

But the most serious quarrel that will occur to the student of comparative law, is the author's failure to treat together and with adequacy, the fundamental notions that run through nearly all the subdivisions of a particular legal system and through all legal systems, namely, the effect of fraud, mistake, duress, conditions or impossibility upon legal transactions.

The law of property is next analyzed. Roman ideas of acquisition and transfer of property, servitudes, testamentary and intestate succession, are stated clearly,—the emphasis falling largely on dogmatic exposition and only incidentally upon the historic development. The discussion of possession is outstanding in its simplicity and clarity. But that other intriguing series of problems that are called to one's mind by mention of the words *"accesio," "specificatio," "confusio"* are hardly handled with justice to their importance.

Dr. Radin's modest preface limits the scope of the volume to "a brief and simple introduction to a large and difficult subject." In the main, his mission is well met. And if it is difficult to refrain from echoing the regret that we mentioned at the beginning, we may recall those old wood-cuts of the latter half of the 15th century that illustrated how hornbooks were sometimes used to teach children the elements of knowledge. Made of tough horn or leather and shaped like an old-fashioned butter paddle, the larger hornbooks formed a convenient instrument with which to discipline the erring child.

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HANDBOOK OF THE LAW OF EQUITY PLEADING AND PRACTICE. By Walter C. Clephane, St. Paul: Hornbook Series. West Publishing Co., 1926, pp. xiv, 605.

Professor Clephane's work will find its greatest usefulness in making available to students a comprehensive outline of equity pleading and practice. The need for such a book is increased by the fact that in