

SPECVLVM IVRIS

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Roman Law as a Reflection of
Social and Economic Life
in Antiquity

Edited by

Jean-Jacques Aubert *and* Boudewijn Sirks

Ann Arbor

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Preface



The development of Roman law during the imperial period can be traced through an abundant supply of extant imperial constitutions and the writings of classical and postclassical jurists, preserved in late Eastern compilations, in addition to an always growing collection of documentary evidence. These types of sources have often been taken as reflecting otherwise little-known aspects of the society governed by Roman law. Most rulings and legal opinions have been transmitted in the form of short, elliptic excerpts, the context of which remains for the most part unclear. To make things worse, the texts themselves, in the form in which they have been transmitted by Byzantine compilers, are not always reliable, because they might have been adapted to later conditions. Legal scholars in the early twentieth century spent much energy hunting for interpolations and found far too many. Nowadays, the trend in Roman law studies has swung back from a hypercritical approach to a more nuanced one, whereby the substance of legal texts, if not their form, is considered genuine unless proved otherwise with overwhelming arguments or evidence. Modern scholars are left to deal with a collection of hermeneutic difficulties that can be solved only by considering the practical situations in response to which individual rulings and opinions had been issued. Benefiting from their deep knowledge of the material culture of the Roman Empire and of the social and economic mentalities lurking in the background, ancient historians and classicists are more and more willing to pick up the ball that was for a long time in the preserve of legal historians. They must try to squeeze information from the legal sources to complement what is already known through literary, epigraphical, papyrological, numismatic, and archaeological evidence. Conversely, legal scholars can capitalize on the thus restored trust in the texts to reconstruct classical and postclassical law.

Some interesting and, in some cases, even pioneering work has been achieved in the last twenty years, but much remains to be done, consider-

ing the mass and intricacies of extant texts and the scarcity of scholars capable and willing to deal with them along these lines. When discussing classical jurisprudence, it is necessary to reconstruct the historical context in which individual opinions originated, to determine to what extent these opinions were influenced by the known doctrinal position of their respective authors, and to evaluate the general purpose—hypothetical constructs or practical advice—of the respective works from which these texts were excerpted. A similar approach should be used when dealing with imperial legislation, as it is necessary to take into account the structure of the compilation in which the texts are preserved.

The essays collected here—with the exception of David Cherry's—were first presented as papers by a panel at the 1996 American Philological Association's annual meeting in New York, with Professor Bruce W. Frier chairing the session. The papers then elicited a stimulating discussion with a lively and knowledgeable audience, whose comments have been worked into the revised written versions. One of the oral contributors, Mr. Peter King, and Professor Frier declined to submit written versions of their papers and commentaries. Professor Michael Peachin and Professor David Cherry graciously stepped in on the editors' invitation. The result presented here is a collection of essays dealing with specific aspects of private and public law, using legal and nonlegal texts and documents to demonstrate the reciprocal influence of law and social and economic life. The contributors were asked to discuss a particular case dealing with the law of obligations, persons, property, or succession, as well as with criminal or administrative law. Each essay was to attempt to show the limits and potential of legal sources, to trace chronological and local variations in proposed legal solutions, and/or to demonstrate how what appears at first in legal texts as logical or linguistic oddities or as insignificant details can be explained by an improved understanding of the historical, economic, social, and administrative context.

In the process of publication, these essays have gone through the critical examination of two anonymous referees, who should be thanked for their helpful comments. One of them pointed out that “an attempt to integrate Roman legal evidence with other kinds of sources” would have been “better done by one person with a comprehensive grasp of the whole field of Roman law and a good knowledge of Roman social and economic life,” while acknowledging that “people who could do this are few” and that “those who are willing to attempt it are even fewer.” Attempting to meet this criteria along the analytical line followed by the contributors to the present volume would have made this a very long book. This referee

was obviously thinking of syntheses like J. A. Crook's *Law and Life of Rome, 90 B.C.—A.D. 212* (Ithaca, NY, 1967) or D. Johnston's *Roman Law in Context* (Cambridge, 1999), two books of obvious merit, which, however, address a different issue: what did the Roman legal system look like and what did it tell us about the society in which it operated.

Aware of the fact that the collection presented here is somewhat heterogeneous and does not even try to cover all aspects of Roman law, we, as editors, have considered that individual and independent case studies should serve the purpose of allowing the contributors to propose various approaches to the problem of integrating dissimilar sources. We hope that studying important questions in depth will compensate for the selective nature of the topics chosen for discussion and the diversity of the points of view adopted by the authors.

The publication of the book took a lot more time than expected, due to the commitments and professional moves of some of the contributors. We are grateful to Dr. Ellen Bauerle, acquiring editor for the University of Michigan Press, her successor, Mr. Collin Ganio, and Ms. Claudia V. Leo, his editorial assistant, for their help in the process of getting the manuscript ready for publication, and to Ms. Deborah Abbott for checking the papers of the contributors using English as a second language.

For the sake of consistency, Roman jurists are herein referred to by their Latin names (Paulus, Ulpianus, Iulianus, etc.).

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Abbreviations



The following works can be consulted for abbreviations not listed here: for ancient authors and texts, *The Oxford Classical Dictionary*, 3d ed. (Oxford, 1996); for periodicals, *L'année philologique*; for inscriptions, F. Bérard et al., *Guide de l'épigraphiste*, 3d ed. (Paris, 2000); for papyri, J. F. Oates et al., *Checklist of Editions of Greek and Latin Papyri, Ostraka, and Tablets*, 4th ed., *BASP* Suppl. 7 (Atlanta, 1992); for biblical books, the *New Revised Standard Version* (Oxford, 1989).

<i>AE</i>	<i>L'année épigraphique</i>
<i>CIL</i>	<i>Corpus Inscriptionum Latinarum</i>
<i>Cod. Iust.</i>	<i>Codex Iustinianus</i>
<i>Cod. Theod.</i>	<i>Codex Theodosianus</i>
<i>Dig.</i>	<i>Digesta</i>
<i>FIRA</i>	<i>Fontes Iuris Romani Anteiustiniani</i> , ed. S. Riccobono et al.
<i>Gai. Inst.</i>	<i>Gaius Institutiones</i>
<i>ILS</i>	<i>Inscriptiones Latinae Selectae</i>
<i>Inst. Iust.</i>	<i>Justinian Institutiones</i>
<i>Musurillo</i>	Musurillo, H. 1972. <i>The Acts of the Christian Martyrs</i> . Oxford.
<i>Paulus Sent.</i>	<i>Pseudo-Paulus Sententiae</i>
<i>PG</i>	<i>Patrologia Graeca</i>
<i>Philadelphia Digest</i>	Watson, A., et al. 1998. <i>The Digest of Justinian</i> . Philadelphia.
<i>PL</i>	<i>Patrologia Latina</i>