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Roman Law Reloaded

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Roman Law Reloaded*

It is a rare pleasure for a book reviewer to introduce his readers to a true game changer. Roman law scholarship will be vastly improved by the existence of the new *Handbuch des Römischen Privatrechts*. This *Handbook* replaces the standard accounts of Max Kaser on Roman private law and Roman civil procedure, which were first published in the 1950s and 1960s and only updated once in the 1970s (private law) and in the 1990s (civil procedure). Since then, obviously, the study of Roman law has moved on. Innovative methodologies have evolved, additional topics have received attention, and old questions have received new answers. Yet, no one-stop shop to access these riches existed. Experts and non-experts alike had to trawl through bibliographies and databases in order to find the most recent literature. This was all the more complicated as writings on Roman law are published in a variety of countries and languages, and the research done by ancient historians, classicists, archaeologists and those working in other adjacent disciplines also has to be taken into account.

Henceforth, the *Handbook* will provide guidance and orientation in this difficult terrain. It covers the entirety of ancient Roman private law and civil procedure, from the Twelve Tables to Justinian, with a focus on the late Republic and the Imperial period. It is divided into five parts with overall 112 chapters. The introductory Part I deals with the production and development of Roman law during the various periods of Roman law (1–192) and provides an overview of the sources (193–317). Part II looks at the development of different systems of civil procedure over time (319–510) and the various means for private actors to effect legal change (511–683). Parts III to V then follow the tripartite distinction of the Institutes of Gaius and deal with *personae* (685–1028), *res* (1029–1534) and *actiones* (1535–3050).

Six editors were in charge of producing the *Handbook*, all of them originally from Germany, Austria and Switzerland and leading scholars of the discipline. The contributions were produced by a team of 64 authors from all over Europe (again, mostly from the German-speaking countries) and, in two cases, South America. They range from the very senior (Detlef Liebs, *1936) to the relatively junior, yet well established (Lisa Isola, *1988). Many contributors cover ground with which they are intimately familiar, given that they previously explored their topic in their PhD or *Habilitation* theses, e. g., the contributions of Thomas Finke-nauer on *stipulatio* and Pascal Pichonnaz on *compensatio* (564–624 and 2994–3036, respectively), or can rely on decades of pertinent research (once again Detlef Liebs, with a magisterial overview of Roman legal literature, 193–221). What emerges is a comprehensive, authoritative and state-of-the-art account of Roman law. There is no point in discussing any of the individual chapters in any detail. Some of them are succinct, others vast, such as the highly innovative chapter of José Luis Alonso and Ulrike Babusiaux on papyrological and epigraphical sources and Christian Baldus' full account of the *rei vindicatio*, both bordering on a hundred pages (222–317 and 1537–1631, respectively), and Wolfgang Ernst's quasi-monographic 250 pages on the law of sales (2039–2288).

The monumental *Handbook* comes in two volumes, with an added volume for the indices. It has been beautifully produced by leading German law publishers Mohr Siebeck and edited to an exceptionally high standard; there is no sloppiness in the main text or in the footnotes, in contrast to what can now be frequently observed in books published by bigger and more profit-oriented Anglo-American houses. The editors are to be congratulated for seeing such a massive project through to

* ULRIKE BABUSIAUX, CHRISTIAN BALDUS, WOLFGANG ERNST, FRANZ-STEFAN MEISSEL, JOHANNES PLATSCHEK, THOMAS RÜFNER (eds.), *Handbuch des Römischen Privatrechts*, Tübingen: Mohr Siebeck 2023, 2 vols. plus indices, xcvi + 3707 p., ISBN 978-3-16-152359-5

the end. It must have been an all-consuming effort for them over a long period of time, as is clear from the preface. Four contributors did not live to see the book in print; one of them submitted his manuscript before his death in 2017, the same year in which the Commissioning Editor with Mohr Siebeck who had seen the book project through its early stages retired from active service.

As has been said above, Roman law scholarship will be vastly improved by the existence of the new *Handbuch des Römischen Privatrechts*. This is not to say that Roman law scholarship will never be the same after the publication of this book. The *Handbook* builds on, and contributes to, the finest tradition of continental, doctrinal work in the field. Unlike its semi-homonymous sibling published by Oxford University Press a while ago,¹ it

does not announce a paradigm shift on how we (should) see the law of ancient Rome. Its preface is modest to the point of self-effacement and does not promise anything that cannot be delivered. This is a good thing. There is a place for books on law in context, and there is one for books on law *tout court*. The *Handbook*, for all its interdisciplinary references and deep engagement with more recent scholarly trends (see, e. g., the contributions of Evelyn Höbenreich and Richard Gamauf on the legal status of women and on the enslaved, 741–767 and 924–994, respectively), firmly belongs in the latter category. To make this vast storehouse of knowledge accessible beyond the German-speaking community, an English translation is a matter of urgency. ■

Cosima Möller

Diversity bei den römischen Juristen – Geschichtlichkeit und die Rolle der Dogmatik*

Aldo Schiavone verfolgt sein Projekt »Scriptores iuris Romani« seit 2015 mit Unterstützung durch einen *European Research Grant*. Das Ziel des Projekts wird im Internet folgendermaßen beschrieben: »Lo scopo che il progetto intende realizzare è creare le basi, testuali e interpretative, per un nuovo approccio a ciò che resta delle opere degli antichi giuristi romani.« Aus dieser Arbeit sind bereits zahlreiche Veröffentlichungen hervorgegangen. Das zu besprechende Buch versammelt Aufsätze, die sich mit dem Forschungsansatz beschäftigen oder diesen Zugang anwenden. Im ersten Teil »Methods and Paths« wird die methodologische Perspektive in den wissenschaftsgeschichtlichen Entwicklungsgang eingeordnet, während im zweiten Teil »Stories of Jurists and of Jurisprudence« Untersuchungen präsentiert werden, die einen projektspezifischen Zugang zur Überlieferung des römischen Rechts bieten.

Im 1. Kapitel stellt Schiavone das Projekt in seinen Grundzügen vor. Nicht die Gesetzgebung Justinians, sondern die römischen Juristen sollen in den Mittelpunkt gerückt werden. Ihre Individualität und ihre historische Situation sollen so gut wie möglich erfasst werden. Grundlagen für diese Untersuchung und für den Versuch, die ursprüngliche historische Gestalt ihrer Werke zu rekonstruieren, sind der kritische Apparat der Digestenausgabe von Mommsen und die Palingenesie von Lenel. Schiavone führt aus, dass die wahre Geschichte der Entwicklung des römischen Rechts mit günstigen Auswirkungen auf die gegenwärtigen Herausforderungen für das Recht in einer globalisierten Welt entdeckt und ins Licht gerückt werden könne. Für diese Geschichte seien zwei Aspekte der Tätigkeit der Juristen zentral: die Erfindung einer Wissenschaft und die Gestaltung eines Rechtssystems, das ein globales Imperium

1 PAUL J. DU PLESSIS, CLIFFORD ANDO, KAIUS TUORI (eds.), *The Oxford Handbook of Roman Law and Society*, Oxford 2016.

* FARA NASTI, ALDO SCHIAVONE (Hg.), *Jurists and Legal Science in the History of Roman Law*, transl. by PETER CHRISTIE (Routledge-Giappi-

chelli Studies in Law), London/Turin: Routledge / Giappichelli 2022, 318 S., ISBN 978-0-367-33333-1