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Römisches Recht von den Anfängen bis heute

Okko Behrends, *Römisches Recht von den Anfängen bis heute*. Göttingen: Atticus, 2022. Pp. 300. ISBN 9783969250129

Review by

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This book offers the reader an overview of the history of Roman law and its main institutions from its origins to its reception in intermediate and modern law, with special emphasis on its influence on present-day law and society. At first glance, therefore, the book looks like a standard Roman law handbook, of the kind used in law schools to introduce students in their first semesters to the roots of our modern continental civil law.

However, both Behrends's approach to the explanation of the nature and origin of Roman law, as well as the organization of the materials within the book, reveal that the aspiration of this work is broader: to become, on the one hand, a user-friendly instrument for those who wish to approach Roman law without previous legal knowledge; on the other hand, to offer a personal vision of the genesis and evolution of Roman law different from the one available in the usual manuals, an aim that will be of particular interest to specialists.

'The book thus seems to appeal to two distinct constituencies— novice and expert. If the reader is a specialist or scholar, he or she will undoubtedly be surprised by some of the resources the author uses to bring the work to a wider public whose scientific references or cultural sources are not, logically, the traditional ones in the academic world: for example, the author refers the reader to look up certain terms in Wikipedia, by means of notes marked with a ""WP"" next to the term to be explained; Wikipedia is referred to when historical terms such as "Lehnspyramide" (feudal pyramid, p. 28) are used, key figures in the history of Roman and German law (Savigny, Ihering, Puchta or Windscheid, p. 35) are cited, or even when adjectives such as ""manichaean"" ("*manichäische*", p. 41) are used, although the author does not use this term in its literal historical-religious sense but as a linguistic metaphor, alluding to the discussions within Romanistic science.

A second formal aspect in this same spirit is the decision to eliminate practically all footnotes, except those that give the specific references to the sources (classical or modern, literary or legal) mentioned in the text. As is beginning to be the case with handbooks from other publishers, here too the remaining explanatory notes or ""glosses"" ("*Glossen*") are to be found in a separate digital document, accessible on the publisher''s website. A list of all the glossed concepts can be found at the end of the book in the Appendices section (p. 293–297), which is a very useful clue, this time for the specialist reader

Moving on to the content and structure of the work, it is divided into three parts: the first two dedicated to the history of Roman law and its reception up to the present day, and the third to the exposition of the different institutions of Roman private law.

It is striking, in this sense, that the work alters the ““natural”“ chronological order followed in most manuals of Roman law, since instead of explaining the origin and evolution of Roman law from its beginnings to the present day, part 1 (p. 15–44) begins with the current value of Roman law, and to illustrate this, the history of Justinian’’s compilation and its reception in intermediate and modern law is already advanced there. Only after highlighting the importance of the period from the great Justinian compilation to the modern civil codes, does the author undertake a diachronic study of the origin and evolution of Roman law: Part 2: in the monarchic era (p. 47–62), in the Republic (p. 63–98) and in the Principate (p. 99–124).

The author chooses to exclude the “Postclassical” period of the Dominate—from the end of the Principate after the death of Alexander Severus until Justinian—and therefore key legal works such as the Gregorian and Hermogenian Codes, and especially the Theodosian compilation, are left aside. The same marks the treatment of the legal literature generated by anonymous jurists who kept legal science alive—even without the *auctoritas* they enjoyed in the Principate—byproducing essential works contributing to our knowledge of Roman law in that period: i.e. the *Pauli Sententiae*, the *Epitome Vlpiani*, the *Fragmenta Vaticana*, the postclassical reelaborations of Gaius or the very interesting testimonies of legal contact and juridical-cultural exchange such as the *Collatio* or the *Liber Syro-Romanus*.

This conscious omission, however, shows that the author clearly has another perspective in mind, a different line of thought that does not fit the model of the traditional diachronically exhaustive exposition: the author’’s aim is to underline the special relevance of the intellectual, and above all philosophical, context in which Roman law was born, a context that reached its creative apogee with the Principate.

The author sets as one of his distinctive research features the study of Roman jurisprudence, the point of view of the different Greek philosophical currents that would have guided and influenced Roman law and legal thought it is coherent to this leap between the Classical and the Justinian era, alluding, however, to the influence of Christianity (p. 26) as the main intellectual current that, between the two periods, definitely influenced the version of Roman Law received by posterity. From this point of view, too, the author often dispenses with the traditional division of the periods of Roman law from a political point of view, in order to resort to periodizations of a more cultural nature (thus, for example, he often prefers ““Hellenism” as a descriptor to” ““Principate”,” see e.g. the description of the acquisition of property, p. 194–199, where pre-Classical, Classical and high-Classical jurisprudence are included under the shared rubric of Hellenism).

Central to the book, therefore, is the exposition of the activity of the two great classical jurisprudential schools, Sabinian and Proculian. Taking as his object some of their most famous controversies (p. 112 ff.), the author explains why the defining feature of the Sabinians would have been their attachment to a concept of providential natural law, with preclassical roots, as opposed to a positivist and rule-based conception of the legal system on the part of the Proculians (p. 118–119). As will be seen below, this will be the main line of exposition that the author will also adopt to describe each of the institutions of Roman law.

The first two parts take up almost half of the book, which underlines the importance Behrends attaches to the detailed explanation of this historical and intellectual context, before beginning the study of each of the Institutions of Roman law (part 3, covering the second half of the book). It is refreshing to find again a treatise on Roman law that understands the importance of the *history* of

Roman law, something that unfortunately most of today’’s textbooks must sacrifice or reduce to a minimum. Since the subject of Roman law is always in danger of extinction in university curricula, authors often dispense with the ““not so useful”“ historical aspects and focus only on the more ““practical”“ dogmatic and technical explanation of each of the legal institutions.

Part 3 is structured according to the traditional division of persons (p. 127–166), things (divided in turn into two parts, the first devoted to inheritance law and then in more detail to property and real estate rights, and the second one dealing with the Roman law of obligations), and actions (p. 259–274, devoted to a brief account of the development of the Roman judicial process and the enforcement of judgements).

The section on persons is a good example of the philosophical orientation and broad cultural contextualization that inspires the author.The anthropological and etymological value of the term ““person”“ itself, for example, is defined by means of sources ranging from Martial to Shakespeare (p. 128) including Aeschylus’s’ *Oresteia* (p. 133). Another good exampleis the placement of the figure of the *procurator* in this section –and not, as usual, in the section on procedural law—in order to emphasize the origin of the figure from the curatorship (*cura*, p. 161–162), also here with references to the skeptical philosophical conception of the figure and its reflection in the German Civil Code-rules on representation today.

The author also adopts a strong philosophy of law perspective in describing the evolution of different legal concepts, which would always start from a ““providential”“ and Natural Law conception, and then evolve into more positivist and regulated models. This would be so, for example, in the concept of property, whose providential and ius naturale-esque conception would be related to the myth of the “Golden Age” (p. 184–185); in this sense, “Gloss” 69 is thought-provoking, for the study of the legal nature of the slave’’s son is directly related to the double title of the *Res cottidianae sive aureorum*, which would allude to the “everyday” nature of legal practice but also to the “golden principles” valid in the Golden Age: principles that would be clearly identifiable in the interpretations of Junius Brutus regarding his humanistic conception of the slave’’s child, as opposed to other types of goods that would be the usual object of regulation through “everyday practice.” In the same way, the evolution of the contract of sale is explained, starting from a conception of it from a providential natural law (p. 225) thatwould evolve in classical times to a reciprocal obligatory model.

As I mentioned above, the author’s proposal for the arrangement of material when explaining institutions, such as the content of sale almost exclusively from the point of view of liability (p. 227–231), is also very interesting from a systematic point of view. Another example would be the inclusion of the *re*-contracts together with the mandate contract (p. 237–243), based on their common characteristics of gratuitousness and the provision of goods and services *bona fide*.

The book’s appendices, finally, are undoubtedly interesting, and confirm the author’s intention to offer an unusual and very personal treatise on Roman law. The first is a series of Latin aphorisms that would be still valid today for Modern law (p. 277–287), which are, however, arranged in an “associative order” (“in assoziativer Reihenfolge”) that sometimes is difficult to follow even for the specialist. This is followed by a brief bibliography arranged thematically, where also the author’s contributions to each of the topics dealt with are recorded, and after the aforementioned list of glosses, the work closes with another personal stamp: a quotation of Cicero (*De inv.* II 3.9), titled by

the author: “The Methodological Creed of Academic Skepticism: The Representative of Modernity in Antiquity”.

In the limited space that this review allows, I hope that the above examples suffice to highlight how the author stamps the text, at all times, with his personal mark, composing a treatise that will give rise to discussion with specialists while being at the same time surprisingly easy to read, rife with with historical-cultural references that will certainly be of interest to the nonjurist reader. It is a distinct piece of scholarship that, in breaking with the conventions of handbooks and introductory syllabi, will leave no one indifferent.