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Peter Stein. *Roman Law in European History.* Cambridge, New York, and Melbourne: Cambridge University Press, 1999. x + 137 pp. $26.99 (paper), ISBN 978-0-521-64379-5; $84.00 (cloth), ISBN 978-0-521-64372-6.

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ROMAN LAW AFTER THE FALL OF ROME

Every good ghost story deserves a good storyteller, and the story Peter Stein sets out to tell is, as Vinogradoff said, a ghost story.[1] In *Roman Law in European History*, a master gives his readers both an introduction to the law of ancient Rome and an account of how that law lived on, well after the demise of the ancient society. For students and for scholarly beginners, this short book is an excellent way to learn the story and to understand its importance.

There is no better time for the story to be told. The European movement has sparked interest in the period when Europe was unified under ancient Rome. The movement has also instigated a search for a *ius commune*, or common law of Europe, revived from the Middle Ages (see p. 130). Projects aimed at unifying the private law of Europe flourish now.[2] As international trade grows, European notions of private law are creeping into the law of several common-law countries.[3] Understanding European law and the forces that made it is as essential as ever. Roman law is one of the most important of those forces–perhaps the defining force. *Roman Law in European History* allows its readers to see how Roman law has shaped European law, even into our own times.

Professor Stein's book shows its readers how that process took place. The work starts with a substantive chapter on ancient law (for which many will be grateful–often such books assume the reader will already know Roman law).[4] Then, after a moment spent on the barbarian codes, Professor Stein takes the reader into the heart of medieval legal development, including the rediscovery of the Digest, the *studium* at Bologna, and the ensuing schools of glossators and commentators. Church, empire, and canon law are discussed, as are post-medieval developments. Humanism and the scientific movement in law bring the story to codification and last, to the present.

This version of the story is straightforward and chronological. The text speaks not only to the well-prepared but also to those whose recall of European history is spotty or nonexistent. To help place the story, references to familiar names and events are included (such as Brutus's assassination of Julius Caesar, p. 14). The text tries to take into account the reader who reads only English, with explanations of linguistic derivations (p. 3) and helpful translations of names (p. 67).[5]

Although it is a summary that is mindful of the uninitiated, this small book manages not to sacrifice the rigorous or the scholarly. Especially important is the book's emphasis on legal method and legal procedure. Professor Stein explains how the law grew through interpretation and juristic opinion (pp. 7-13) in a system of case law and disputation (pp. 17, 18). These modes of legal development resonate well for the modern reader, who is likely to recognize at least some of these elements in current legal systems. Professor Stein also exposes the beauty of classical legal reasoning, explaining how Gaius's insight allowed obligations to be seen not only as the debt of one party but as the asset of the other party. The reader begins to understand how legal categories change and grow, with consequent impact on everyday legal ideas like contracts and torts (p. 20). This is the stuff of law. This exposition helps us see its timelessness.

Perhaps most significantly, Professor Stein does not neglect procedural innovations and their effect. He introduces the *cognitio* procedure, for instance, in the chapter on ancient law (p. 23), thus laying the groundwork for his discussion later of the Romano-canonical procedure (pp. 57-59). The latter procedure underlies some of the hallmark traits of current civil law, including the inquisitorial procedure and the exaltation of academic jurists (see pp. 59, 90). The book also explains how procedure affects both legal method and substantive law. To take the *cognitio* example again, Professor Stein shows how the new procedure led from orality to writing (p. 23), and how the decline of the formulary system "led to a loss in the precision of the law itself" (p. 25). The impact of such

changes can be hard to see, especially for those without a background in law, but the book meets that problem with clear, concrete examples (pp. 25-26). By the time later procedural changes are addressed, the reader is prepared to think about process in a careful, and appropriately lawyerly, way.

An accessible introductory work that is historically and legally rigorous is especially welcome. As recent scholarship has shown, American lawyers and judges have often relied on (not necessarily accurate) ideas of Roman law in proposing legal changes in the United States.[6] With Roman law, it is too easy to be ignorant or mistaken; coming to terms with Roman law can seem a laborious task.[7] *Roman Law in European History* can familiarize readers with fundamental ideas and can guide the curious to the first rank of accepted scholarship. The book is a major contribution in this regard, as many library shelves tend toward outdated or obsolescent textbooks when it comes to Roman law.

An English version of Professor Stein's work[8] is all the more valuable because few books in English focus on the life of Roman law after the fall of Rome. Vinogradoff's small collection of lectures is one. Nice though it was, Vinogradoff's work is aged. He wrote when the German Civil Code (BGB) was still new, and its supersession of the Roman law of Germany was but recent.[9] More recent books aim to cover broader topics; none focus on the life and afterlife of Roman law. Although it shows the importance of Roman law for civil-law systems, Alan Watson's *The Making of the Civil Law* (1981) ranges across many aspects of such systems instead of concentrating on Roman law in particular. Historical textbooks also spread themselves more widely, such as the textbook on *European Legal History* from Glasgow[10] and Manlio Bellomo's *The Common Legal Past of Europe, 1000-1800* (1991). Moreover, the latter abstracts and adapts the basic story to fit around the author's argument, and interesting though the argument is, Professor Bellomo's book is not the straightforward chronological account of Professor Stein. Franz Wieacker's work is a more elaborate endeavor that requires a serious resolve from those who undertake it, and although it includes European history, it is centered around the German experience.[11]

The value of this new book is not reduced simply because a reviewer would make decisions that are different from the author's. This reviewer might have given more space to the role of commerce (which is discussed on pp. 87, 121) and the governmental or constitutional implications of Roman law (see p. 91). In addition, the debate about the morality *vel non* of Roman law [12] might have been mentioned in a couple of places (pp. 24, 121). Still, these are minor differences in perspective. This reviewer could spot no errors beyond the typographical (p. 33 [Theodora died in 548, not 448]).

Roman Law in European History, unsurprisingly, is a solid and reliable guide. Although it takes the form of a summary and aims at clear exposition rather than extended argument, a learned and insightful synthesis is essential for telling the story well. A short work on Roman law in European history is no small undertaking. While the story is a good one, it is not simple. We must see the unifying influence of Roman law in European history, but we also need to understand how Roman law can be a political tool with a potential for fragmentation (p. 118). As we hear these debates continuing,[13] we learn to think again of the story of Roman law and its afterlife.

Notes:

[1]. *See* PAUL VINOGRADOFF, ROMAN LAW IN MEDIEVAL EUROPE 13 (Speculum Historiale and Barnes & Noble 1968) (1929). The work was first published in 1909. *Id.* at vii, 5.

[2]. A couple of the more prominent include the PRINCIPLES OF EUROPEAN CONTRACT LAW (Ole Lando & Hugh Beale eds., 1995) and TOWARDS A EUROPEAN CIVIL CODE (A.S. Hartkamp et al. eds., 1994).

[3]. *See, e.g.,* Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, 19 I.L.M. 668. An example of a provision with a Continental flair is article 46(1) ("buyer may require performance by the seller"), establishing specific performance as an ordinary rather than extraordinary remedy.

[4]. *See* VINOGRADOFF, *supra* note 1, at 13. Similar in their omission of substantive chapters on ancient law are MANLIO BELLOMO, THE COMMON LEGAL PAST OF EUROPE: 1000-1800, at ix (Lydia G. Cochrane trans., Catholic Univ. of Am. Press 1995) (2d ed. 1991), O.F. ROBINSON et al., EUROPEAN LEGAL HISTORY: SOURCES AND INSTITUTIONS (2d ed. 1994), and FRANZ WIEACKER, A HISTORY OF PRIVATE LAW IN EUROPE (WITH PARTICULAR REFERENCE TO GERMANY) (Tony Weir trans., Clarendon Press 1995) (1967).

[5]. The text is perhaps not as uniformly friendly to the monoglot as some might wish, and sometimes titles could be translated to aid the English reader (pp. 94, 100, 107). Although suggestions for further reading are appropriately multilingual, a summary work such as this one might indicate the language of a source if the lan-

guage is not apparent from the citation. (See p. 69 citation of L. Schmugge, "Codicis Justiniani et Institutionum baiulus," *Ius Commune* 6 (1977).)

[6]. *See* Shael Herman, *The Fate and Future of Codification in America*, 40 AM. J. LEGAL HIST. 407, 408 (1996); Andrew P. Morriss, *Decius S. Wade's* The Common Law, 59 MONT. L. REV. 225 (1998); *see also* Andrew P. Morriss, "This State Will Soon Have Plenty of Laws": Lessons from One Hundred Years of Codification in Montana_, 56 MONT. L. REV. 359, 383 (1995).

[7]. *See* Alan Watson, *The Origins of the Code Noir Revisited*, 71 TUL. L. REV. 1041, 1055 (1997).

[8]. The book was originally published as ROMISCHES RECHT UND EUROPA (Frankfurt am Main: Fischer Taschenbuch Verlag 1996).

[9]. *See* VINOGRADOFF, *supra* note 1, at 11.

[10]. *See* ROBINSON, *supra* note 4.

[11]. *See* WIEACKER, *supra* note 4. Perhaps also worth mentioning are two works that have not yet reached this reviewer: THOMAS GLYNN WATKIN, AN HISTORICAL INTRODUCTION TO MODERN CIVIL LAW is announced for October 1999 from Ashgate, and MAURIZIO LUPOI, THE ORIGINS OF THE EUROPEAN LEGAL ORDER (Adrian Belton trans., 1999) was ordered from Cambridge University Press months ago by nearby libraries, but the book has not yet surfaced. The Italian version has proven difficult to obtain from American libraries.

[12]. *See, e.g.,* James Q. Whitman, *The Moral Menace of Roman Law and the Making of Commerce: Some Dutch Evidence*, 105 YALE L.J. 1841 (1996) ("Did Roman law represent a kind of moral menace in premodern Europe, encouraging commercialism, greed, and exploitativeness, and fostering a lifeless 'rationalism'? In one version or another, this idea has been accepted by Europeans for centuries.").

[13]. *See* Ugo Mattei, *The Issue of European Civil Codification and Legal Scholarship: Biases, Strategies, and Developments*, 21 HASTINGS INT'L & COMP. L. REV. 883, 889-90 (1998).

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