

BOOK REVIEWS

ROMAN LAW IN EUROPEAN HISTORY by PETER STEIN, Cambridge University Press, 1999, x + 137 pp (hardback £35) ISBN 0-521-64372-4, (paperback £11.95) ISBN 0-521-64379-1.

ANGLO-AMERICAN LAW AND CANON LAW: Canonical Roots of the Common Law Tradition, by JAVIER MARTÍNEZ-TORRÓN, Comparative Studies in Continental and Anglo-American Legal History v. 18, Dunker & Humblot, Berlin, 1998, xii + 195 pp (paperback DM 92) ISBN 3-428-09414-X.

Roman law occupies a unique place indeed, not only in legal history, but in European culture as a whole. Most historical works on Roman law, however, trace the development of the law and its institutions from the XII Tables to Justinian's Corpus, and then (if one is lucky) cover the following millennium and a half in a brief, final chapter. Buckland's *Text-Book of Roman Law* specifically limits consideration to the period from Augustus to Justinian; Jolowicz's massive work, *Historical Introduction to the Study of Roman Law*, ends with a review of the Byzantine commentators on Justinian. Neither of these, of course, is an introductory text; but even Wolff's *Roman Law. An Historical Introduction*, the most readily available introduction to the historical development of the law, covers Roman law in the medieval and early modern periods with stunning brevity almost as an afterthought.

Professor Peter Stein's recent work, *Roman Law in European History* (originally published in 1996 in German as *Römisches Recht und Europa*), is not simply a survey of the development of the institutes of Roman law, but also assesses the place of Roman law in legal history and European culture down through the twentieth century. It is clearly and lucidly written, and can be used with great effectiveness by both students and teachers as an introductory text, yet scholarly precision is never lacking. The annotated bibliographical references at the conclusion of each chapter are up-to-date, and organised by topic. The writing is never oversimplified—the description of the praetor's formulary system in the first chapter is the clearest presentation I have ever run across, and it is described in only a page and a half! A full half of the book is devoted to Roman law after Justinian, and thus furnishes a good and thorough review of the periods generally omitted in histories of Roman law, or covered only partially in specialised monographs (such as Vinogradoff's *Roman Law in Medieval Europe*). The presentation likewise eschews technical language, and can be read with enjoyment by both students and teachers of Roman law, European history and culture.

Another recent work on comparative legal history is Javier Martínez-Torrón's *Anglo-American Law and Canon Law* (originally published in Spanish in 1991, but with some revisions in this English translation). This work, far more specialised and aimed at a far more select audience than Professor Stein's work, is likewise well and clearly written. The author, throughout the work, challenges the traditional view of the insularity of English law by showing the complicated inter-relationships between the canon law and common law. After detailing the routes by which the canon law and canonical jurisprudence entered England, Martínez-Torrón reviews the standard subjects of English law to see to what extent traces of canon law may be detected. Even in areas in which canonical vestiges are usually considered to be absent, such as real property law and criminal law, at least some cross-fertilisation is detected. The longest section of this work reviews the law on marriage and the family, as is understandable and proper.

The author's grounding in the Continental legal tradition is evident on each page; his grasp of English law is likewise thorough, and while many of the historical areas are still the subjects of much research and require much more elucidation, the book does present, dispassionately and broadly, the state of the question.

These broad strokes, however, are also something of a weakness. The reference to the Becket dispute, surely one of the first places one would look for the contact between common and canon law, cites only one secondary source from 1929, despite the torrent of secondary literature that has been poured out on clerical immunity in particular, and the canonical and legal issues of the Becket dispute in general, since the 1950s (a flood that still continues). There are astonishingly few references to primary sources anywhere in the entire book, and they seem to be primarily confined to the several references to the famous 1236 Statute of Merton. While a heavy reliance upon secondary literature is common in European scholarship, and the use of such magisterial works as those of Helmholz, Baker and others is unexceptionable, it would have been particularly welcome to see more use made of the sources themselves, so that the reader who wishes to evaluate the author's claims, or further investigate his trail, does not need to go to another secondary reference to link up with the texts themselves. This might also have saved the author from occasional misstatements (such as his suggestion that the decree *Tametsi* was 'no longer in force' in England by the time of the Council of Trent, when in fact the decree was never promulgated in England because it was the November 1563 product of the twenty-fourth session of the Council of Trent).

But the thrust of the monograph is well taken. The flow of legal institutions and concepts which entered England is wide and varied, and the issues raised in this work repay further study. It is also important to note that the door swings both ways: while there was a long and venerable influence of canon law on English law, there was also a discernible influence of the emerging common law tradition on canon law. Most visible in the works of the Anglo-Norman school of canonists, particularly in their treatises on the *Decretum* of Gratian (such as the anonymous *Summa de multiplici iuris divisione*, c 1167, or the fascinating common law glosses on the *Decretum* found in a manuscript at Gonville and Caius College, Cambridge), there is a less well-known, but nonetheless visible, series of common law footprints across the pages of the canonical teachers. This field of comparative law, for the most part, is still awaiting harvest.

The Revd Fr W. Becket Soule, OP, Vice-officialis, Archdiocese of Washington DC

ARCHAEOLOGICAL HERITAGE LAW by NEIL COOKSON, Barry Rose, Law Publishers Ltd, 2000, lx + 905 pp (£42.00) ISBN 1-872328-94-6.

This is an extremely useful book, written by an archaeologist who is a lecturer at the College of Law in York. So comprehensive is its coverage, indeed, that it may well inhibit any church archaeologist from ever again daring to unsheathe a trowel within range of any ecclesiastical structure. Thirty years ago the areas of overlap between archaeology and the law seemed few, and the parameters of ecclesiastical exemption seemed clear. Today the situation is infinitely more complex. Archaeology is no longer solely viewed as a 'below-ground' activity; numerous public bodies are now (rightly) engaged in the planning process and the whole issue of ecclesiastical exemption has not only spawned numerous clarifying orders but even brought cathedrals into more overt jurisdiction.