

TRADE SECRETS AND ROMAN LAW: THE MYTH EXPLODED

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I. INTRODUCTION

In 1929 A. Arthur Schiller published a celebrated article, *Trade Secrets and the Roman Law; the Actio Servi Corrupti*.¹ His main conclusions are that the Roman owner of a mark or firm name was legally protected against unfair usage by a competitor through the *actio servi corrupti*, “action for making a slave worse,” which the Roman jurists used to grant commercial relief under the guise of private law actions. “If, as the writer believes [writes Schiller], various private causes of action were available in satisfying commercial needs, the state was acting in exactly the same fashion as it does at the present day.”²

Schiller is sadly mistaken as to what was going on. I should like to make my point explicit. The *actio servi corrupti* presumably or possibly could be used to protect trade secrets and other similar commercial interests. That was not its purpose and was, at most, an incidental spin-off. But there is not the slightest evidence that the action was ever so used. In this regard the *actio servi corrupti* is not unique.

Exactly the same can be said of many private law actions including those for theft, damage to property, deposit, and production of property. All of these could, I suppose, be used to protect trade secrets, etc., but there is no evidence they were. It is bizarre to see to any degree the Roman *actio servi corrupti* as the counterpart of modern law for the protection of trade secrets and other such commercial interests.

However, I am not writing to show weaknesses in Schiller’s Roman law analysis. What you will see in this Section is the long prologue to a brief *opera buffa* in two Acts.

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1. A. Arthur Schiller, *Trade Secrets and the Roman Law: The Actio Servi Corrupti*, 30 COLUM. L. REV. 837 (1930) [hereinafter *Secrets*]; now in A. ARTHUR SCHILLER, AN AMERICAN EXPERIENCE IN ROMAN LAW 1 (1971). References are to the former.

2. *Secrets*, *supra* note 1, at 845. He does not discuss these other “private causes of action.”

The action for making a slave worse was introduced by the Edict of the praetor—the elected official who controlled the main court—in the late Republic.³ At least in the time of the great jurist Ulpian, (murdered by the praetorian guard in 224)⁴ the edictal clause ran as follows: “Whoever is said to have harbored another’s male or female slave or to have persuaded with fraudulent intent the slave to do something by which he made him or her worse, against him I will give an action for double the amount involved.”⁵

In the present context of a remedy for infringing trade secrets, the issue is the juristic interpretation of *in eum quanti ea res erit in duplum iudicium dabo* that I translate, “against him I will give an action for double the amount involved.” The question is, did the award of double damages relate only to the decrease in value of the slave or did it also cover consequential loss? Only in the latter alternative can one even begin to consider whether the action gave commercial relief for violation of trade secrets.

In answering the question, we should not readily assume that juristic opinion remained the same over time or that all jurists had the same opinion. In passing we should note that a multiplication of damages was common in Roman delictal actions and is not specific to the *actio servi corrupti*.

There is no doubt that the main thrust of the action was for the decline in the slave’s value. Thus, Ulpian writes that the action was not available to the buyer in good faith because he had no interest in the slave being made worse.⁶ A possessor in good faith was one who thought he was receiving ownership, from say a seller, when he was not. Still, he could only be treated as a possessor in good faith once it had become clear that he was not, in fact, the owner. Ulpian could not have given his opinion on the possessor in good faith unless he believed damages were restricted to the diminution of the slave’s value. The possessor certainly could suffer loss if, for example, another persuaded the slave to steal from the possessor.⁷ But perhaps Ulpian was not thinking too clearly for he does also relate: “[I]t is disputed whether the estimation of damages should be limited to the loss which the slave suffered in body or

3. DIG.11.3.16 (Alfenus Varus, *Digest* 2).

4. LII The Oxyrhyncitus Papyri 2565 (Helen M. Cockle trans. & ed., 1984).

5. DIG.11.3.1 *principio* (Ulpian, *Edict* 23). The translation is my own and differs substantially from that in 1 *The Digest of Justinian* 340 (Theodor Mommsen et al. eds., 1985).

6. DIG.11.3.1.1 (Ulpian, *Edict* 23).

7. The possessor might have some other remedy.

character, that is, the decrease in the slave's value, *or also cover other things*."⁸ So there was a difference of opinion on the scope of the action.

The continuation of the text gives the opinion of Neratius (who was consul suffectus in 87), but something is wrong with the text (which is why I do not translate it—it is untranslatable).⁹ The usual understanding is that Neratius is reported as having restricted the action to the loss in value of the slave.¹⁰ It is also generally held that the compilers of Justinian's *Digest* have altered the text. I take a different view and suspect that we have here a complex scribal error, and that Neratius' view also was that other loss was covered by the action. My argument is four-fold:

(1) Ulpian continues in *D.11.3.11pr.* to relate that Neratius held that thefts subsequently committed by the slave were not covered. This logically implies that Neratius held that earlier theft was covered; that is, one who persuaded a slave to commit a theft from his owner was liable in the *actio servi corrupti* for the corruption but also for that theft, though not for subsequent thefts.

(2) Part of the corruption of the text of *D.11.3.9.3* is *subpertus* which is the reading of the best manuscript, the Florentine. *Subpertus* does not exist in Latin. But it could be a scribal error for some part of the verb, *subripere*, "to take away secretly, to steal," possibly in a past-participial form such as *subreptum*. Some inferior manuscripts do in fact have *subreptus*. My suggestion, then, is that the text originally contained some part of the verb *subripere* which is particularly appropriate to a slave's taking something secretly from his owner. Meaningless change to *subpertus* occurred after an earlier scribe had carelessly omitted a sentence or line of text, resulting in the corrupted text.¹¹

8. Emphasis added

9. The text reads: *Sed quaestionis est, aestimatio utrum eius dumtaxat fieri debeat, quod servus in corpore vel in animo damni senserit, hoc est quanto vilior servus factus sit, an vero et ceterorum. et Neratius ait tanti condemnandum corruptorem, quanti servus ob id, quod subpertus sit, minoris sit.* It has been translated "But it is disputed whether the assessment should only cover damage to the slave's body and character, that is, the decrease in the slave's value, or whether it should cover other things too. Neratius says that the guilty party should be condemned to pay the sum by which the slave's value has decreased as a result of his being made worse.": 1 DIGEST OF JUSTINIAN, *supra* note 5, at 343.

10. Cf. the works cited by Schiller, *Secrets*, *supra* note 1, at 841 n.47; and the translation in DIGEST OF JUSTINIAN, *supra* note 5, at 343.

11. For the manuscript readings, see the *apparatus criticus* in THE DIGEST OF JUSTINIAN, *supra* note 5, at 342.

(3) After giving Neratius' position in *D.11.3.11pr.* Ulpian says: "I think this opinion is correct. For the words of the edict, 'whatever the amount will be,' cover all loss." This wording of Ulpian would be inappropriate if Neratius' view had been that the wrongdoer was liable only for the diminution in the slave's value.

(4) The position of the text of Paul, *D.11.3.10* (which is about to be discussed), sandwiched between Ulpian's fr. 9.3 and 11pr., and which is concerned with the *actio servi corrupti* for theft from his owner is particularly appropriate if fr. 9.3 also referred to a slave's induced wrongful *taking* from his owner.¹² Indeed, the text of Paul—which is out of order—is placed where it is precisely because something was lacking or unclear in Ulpian.

I have discussed Neratius at length because the reconstruction of his position is important for my interpretation of Ulpian's views at the end of *D.11.3.11pr.* His treatment of Neratius seems to show, though without great clarity, that for Ulpian consequential loss was, after all, included in the award in the *actio servi corrupti*. Surprisingly perhaps, that text is the only evidence that we have for that view.

The position of the jurist Paul appears clearly from *D.11.3.10* (Paul, *book 19 on the Edict*):

In this action comes also the estimation of all things that the slave stole with him, because all loss is doubled, nor does it matter whether the things were brought to him or to another or even were consumed: for it is more just that he who was the instigator of the wrong should be liable than that he to whom the things were brought should be sought out.

Thus, we are explicitly told that for Paul the *actio servi corrupti* could be brought also for consequential loss. Hence, where a slave was persuaded to steal from his master, the *actio servi corrupti* gave double the value of these goods as well as double the decrease in the slave's value. Of course, the owner also had other separate remedies: the *actio furti*, action on theft, against the instigator because that action lay not only against the actual thief but equally against a principal or instigator;¹³ and the *vindicatio*, action for ownership, against whoever held the thing.¹⁴

12. A taking from the owner does not appear in *DIG.11.3.9.3* (Ulpian, *Edict 23*), unless *surpetus* is an error for a part of *subripere*.

13. In this context see *DIG.11.3.11.2* (Ulpian, *Edict 23*).

14. The anomalous *condictio furtiva* also lay: *DIG.11.3.11.2* (Ulpian, *Edict 23*).

Despite this, even Paul can incongruously write as if the action was only in respect to the diminution of the slave's value: "In this action, however, the estimation of damages is made at the amount the slave is made cheaper: it is the duty of the judge to determine this."¹⁵ If this text were our sole source of information we might mistakenly conclude that for Paul the *actio servi corrupti* lay only with respect to the loss of value of the slave.

Thus, some jurists held the action lay only with regard to the loss of the slave's value. Others, including Ulpian and Paul, the two jurists most significant in the *Digest* in this connection, and, I believe, Neratius, also allowed consequential damages. Still, the focus of attention was on the devaluation of the slave. Indeed, in the edict itself that stress is marked, with the harboring of a slave actually being set out first.¹⁶ I emphasize this because it shows that the purpose of the edict was not to protect trade secrets or preserve commercial interests. Moreover, it can scarcely be too much stressed in this context that there is not one single Roman juristic text that shows the action being used in this way. Not one. It is true that the action lay when the slave falsified his master's accounts against his master's interest. The existing texts, two in number, are both from Ulpian,¹⁷ and should actually be seen in the context of his emphasis for the action on the decline of the slave's value. It is, however, perhaps fair to assume that if Ulpian granted the consequential damage for loss suffered by the owner when the slave altered his accounts he might do the same when the slave betrayed his owner's trade secrets. But there is a problem. How are these damages to be assessed? No surviving text shows the *actio servi corrupti* or any other possibly relevant action giving a remedy for such speculative damages.

There is much more to the issue. I do not understand why Schiller singles out the *actio servi corrupti* as the vehicle for the protection of commercial interests.¹⁸ There is in fact nothing special in this regard for the action. Thus, for the private law action for theft

15. DIG.11.3.14.8 (Paul, *Edict 19*).

16. The only text for the Republic, from Alfenus Varus, does not show whether or not he would grant consequential damages: DIG.11.3.16 (Alfenus Varus, *Digest 2*). Earlier I presumed he gave the action also for consequential loss: ALAN WATSON, *THE LAW OF OBLIGATIONS IN THE LATER ROMAN REPUBLIC* 265 (1965).

17. DIG.11.3.5; 11.3.11.1.

18. Certainly, as mentioned in note 2, he hints that other actions might be relevant, but he never elaborates.

physical handling (*contrectatio*) was needed.¹⁹ But if you persuaded my slave to erase my name from a written memorandum of purchase the *actio furti* would lie and not just for the value of the material on which it was written.²⁰ So, of course, would the *actio servi corrupti*.²¹ Schiller could have made out just as strong a case for the view that the private law *actio furti* preserved trade secrets, and that such a result occurred even when corrupting a slave was not involved. Yet, for the *actio furti*, however, we have no evidence that the action was ever so used. And we have again the problem of speculative damages.

As a second example, the *actio legis Aquiliae* was the basic private law action for damage to property. If someone erased a document negligently or deliberately to do damage the action lay and not just for the material it was written on.²² Thus, one might think the *actio legis Aquiliae* would lie if you destroyed a document containing my secret commercial formula which I could not otherwise reproduce. Only, once again we have no evidence that the *actio legis Aquiliae* was ever so used. And again we have the problem of assessing speculative damages. The same applies to the *actio depositi*, action of deposit, and the *actio ad exhibendum*, action for production, and to others.²³

II. SCHILLER'S INNOVATIVE USE OF TRADITIONAL JURISTIC METHODS

The First Act, though long in history, may be presented shortly. Schiller's thesis may be put thus: we today have law to protect trade secrets and similar commercial interests. While the standard view is that the Romans had no equivalent concerns for such commercial interests, he says these interests could be—and were Schiller implies—in fact protected in ancient Rome in much the same way as they are today. Now, for my Act One, whether Schiller's argument is correct or not is irrelevant. What is of interest is that his argument is a counterpoint to, almost a reversal of, a standard method used to develop law in medieval and later Europe. Schiller's approach, though ideologically connected, starts from the opposite end—and, please, let me stress that I am not

19. The issue of handling is disputed, but the terms of the dispute can be ignored here: but see Alan Watson, *Contrectatio Again*, in *STUDIA ET DOCUMENTA HISTORIAE ET IURIS* 331 (1962) and the works he cites.

20. DIG.47.2.52.23 (Ulpian, *Edict* 27).

21. Cf. the following text, DIG.47.2.52.24 (Ulpian, *Edict* 27). The *actio de dolo* was granted only when no other remedy was available.

22. DIG.9.2.41.1 (Ulpian, *Sabinus* 41).

23. See, e.g., DIG.9.2.42 (Julian, *Digest* 48).

criticizing Schiller for this. His position basically is: we today have law protecting trade secrets etc.; so had the Romans, though modern scholars deny this. The differences between us and them are not so great.

The methodology of legal interpretation I have in mind for medieval and later Europe is this. Society changes, in a way that requires fresh legal intervention. But legislation does not occur. What is to be done? The answer is straightforward. Manipulate Roman legal texts so that they give the answer you desire. For the skillful and politically astute the difficulty is not great. There is an enormous number of Roman legal texts to choose from. You can always find one that, out of context, can be said to mean what you want it to mean. If you choose your ground carefully, and make a decent assessment of what new law is needed, no one will contradict you. Besides, others equally want to use old texts to make new law. You may be criticized in the particular instance for your solution, but no one will attack your methodology. For me the *locus classicus* for this approach is conflict of laws, a subject for which we have no evidence for Rome. But the whole subject was built up, in diverse ways, by numerous jurists—Bartolus²⁴ and Huber²⁵ above all spring to my mind—by reliance on Roman texts whose sense was very different. But the approach is everywhere. Indeed, the whole approach was the subject of a book first published at Louvain (in modern Belgium) in 1516, republished in Italy, Switzerland, Germany and France, as late as 1648: Nicolas Everardi (or Everts), *Loci argumentorum legales*.²⁶ Assuredly the book and the approach were found useful.

This approach of earlier scholars was: we need new law for a new problem: let us manipulate irrelevant Roman texts so that they say what we want. Schiller's approach is interestingly different: we have trade secrets law: there are no Roman texts on trade secrets law: let me manipulate Roman texts to give the Romans law protecting trade secrets.

III. SCHOLARS' INNOVATIVE USE OF SCHILLER

Act Two. Schiller is creative in his use of Roman law but scholars are equally creative in their use of Schiller. I know of no article on Roman law that has so gripped the imagination of the American legal profession. As early as 1939 William B. Barton claimed on the basis of

24. The relevant passages of Bartolus are translated by J.A. Clarence Smith, *Bartolo on the Conflict of Laws*, 14 AM. J. LEGAL HIST. 157, 247 (1970).

25. See, e.g., ALAN WATSON, JOSEPH STORY AND THE COMITY OF ERRORS 3 (1992).

26. The title varied from time to time.

the article: “The principle that a competitor in the business world is entitled to protection against those who would pirate his trade secrets is an ancient legal concept” and described Schiller’s paper as “exhaustive” on the subject.²⁷ In 1960 Herbert David Klein relied on Schiller but added off his own bat: “Slaves were often hired out and because of the danger that the slave would betray his master’s trade secrets, contracts of hire often contained covenants prohibiting such corruption of slaves.”²⁸ Klein cites no example of such covenants; Schiller gives none. There is no evidence of them; they are Klein’s brilliant extrapolation from Schiller. Am I naive in suspecting that the frequency of such covenants in modern contracts of employment has somehow influenced Klein’s view that they existed in ancient Rome?

The 1971 *Attorneys’ Guide to Trade Secrets* contents itself with the enigmatic but fundamentally misleading statement that “[t]he Romans used slavery to control the line of possessors of the trade secret.”²⁹ We will come again upon this fanciful notion of a use of slavery. Thus, Laura Wheeler: “Throughout ancient history, the law strictly curtailed the dissemination of trade secrets. The Romans used slavery to control the descent of trade secrets.”³⁰ The Romans would be intrigued to know this modern use of Roman slavery, and that they *strictly* curtailed the descent of trade secrets, a subject they forgot to mention. Edmond Gabbay is also inventive: “The protection of rights in secret information originated in Roman law, which protected slave owners against competitors who sought to entice slaves to divulge the secrets of their masters. The diminution in value of the slave, who was considered the master’s property, was the basis for relief.”³¹ Michael A. Epstein and Stuart D. Levi also give Schiller credit for suggesting that the development of trade secrets law can be traced to Roman law.³² They refer to Pliny the Elder, *Naturalis Historia* 35.150, as primary authority for this. Alas, they appear never to have examined the text which is appropriately cited by Schiller. The text has nothing whatever to do with law. Pliny is simply

27. William B. Barton, *A Study in the Law of Trade Secrets*, 13 U. CIN. L. REV. 507 (1939).

28. Herbert David Klein, *The Technical Trade Secret Quadrangle: A Survey*, 55 NW. U. L. REV. 437 (1961).

29. ATTORNEYS’ GUIDE TO TRADE SECRETS 3 (Carol S. Bosnahan ed., California Continuing Education of the Bar, Berkeley, 1971).

30. Laura Wheeler, *Trade Secrets and the Skilled Employee in the Computer Industry*, 61 WASH. U. L.Q. 823, 824 (1983).

31. Edmond Gabbay, *All the King’s Horses—Irreparable Harm in Trade Secret Litigation*, 52 FORDHAM L. REV. 804, 808 (1984).

32. Michael A. Epstein & Stuart D. Levi, *Protecting Trade Secret Information: A Plan for Proactive Strategy*, 43 BUS. LAW. 887, 892 n.33 (1988).

recording a remarkable dyeing process that was used in Egypt. Nor does it appear that the process—which seems akin to modern tie dyeing—was a trade secret: it was just a process not known to the Romans.³³ Melvin F. Jager introduced a new twist in 1983.³⁴ He extended the scope of the *actio servi corrupti* to the case where the slave was forced to divulge his master's trade secrets. But how could the *actio* be so used because it specifically lay for making the slave worse? And a slave who is forced to betray a secret is not corrupted nor is his or her market value lowered. But Jager's claim incidentally does show that the action was not adequate protection of trade secrets even when divulged by a slave. Jager also gives a wonderful emphasis that is totally lacking in Roman law. For him the action was for double the actual damage caused by the disclosure. He adds, as if by an afterthought: "Damages also included reimbursement of the owner for the resulting diminution in the value of a once-loyal slave."³⁵ The Roman world is turned upside down. Jager is subsequently cited in this connection as "one leading author."³⁶ Justin Hughes next ups the ante. For him, the Roman laws "afforded a form of copyright protection to authors."³⁷ Assuredly they did not. Otherwise the great jurists and imperial bureaucrats, Pomponius, Paul, and Ulpian, who shamelessly plagiarized Sabinus (whose writings as a result have not survived) would have had some slight trouble.

Hughes does not refer to Schiller's article here, and perhaps is unaware of it, so why do I suspect (possibly unconscious) Schillerian influence? I have three reasons. First, though Hughes talks of copyright protection—which is the subject of the work he does cite—he is writing in the general context of intellectual property, Schiller's subject.

Second and more important, the work he cites for the existence of ancient law, UNESCO, *The ABC of Copyright*,³⁸ makes it clear in the context of ancient Greece and Rome that the law in fact afforded no protection: "Before the pecuniary interest of the author in his work was recognized, his moral interest was perceived." Hughes is thus closer to Schiller than to the UNESCO publication on which he supposedly relies.

33. For the common law absolute secrecy is not a requirement for a trade secret: RESTATEMENT OF TORTS § 757 cmt. b (1939); 1 MELVIN F. JAGER, TRADE SECRETS LAW § 5.04(3) at 5-26 (1996); MICHAEL A. EPSTEIN, MODERN INTELLECTUAL PROPERTY 24 (2d ed. Supp. 1992).

34. MELVIN F. JAGER, 1984 TRADE SECRETS LAW HANDBOOK 2 (1983).

35. To the same effect, see MELVIN F. JAGER, TRADE SECRETS LAW 1-5 (1996).

36. JAMES H.A. POOLEY, TRADE SECRETS: A GUIDE TO PROTECTING PROPRIETARY BUSINESS INFORMATION 20 (1989).

37. Justin Hughes, *The Philosophy of Intellectual Property*, 77 GEO. L.J. 287, 291 (1988).

38. UNESCO, THE ABC OF COPYRIGHT 12 (1981).

Third, the UNESCO publication talks of Greece and Rome; Hughes, like Schiller, sees the beginning of legal remedies at Rome alone. The notions of Schiller, who was concerned with one small corner of Roman law, have taken on a life of their own. They are generalized. Thus, Marshall Williams, who also does not cite Schiller,³⁹ tells us:

It appears that Roman slavery, at least indirectly, aided in promoting legal acquiescence of nondisclosure for confidential communications. The Roman law of slavery in effect gave rise to the predecessor of the attorney-client privilege. As early as the second century, A.D., Roman law provided that a slave could not disclose his master's secrets. Attorneys were classified as slaves and slaves were classified as servants. A slave-servant consequently was not permitted to testify against his master. The slave was treated as a member of the master's family and the foundation of the family was one of mutual fidelity. Romans tended to believe that a close-knit family was beneficial to their society.⁴⁰

Williams' paragraph contains a remarkable number of errors. For present purposes it is enough to note three: (1) there is no sign in Roman law of a predecessor of the attorney-client privilege; (2) assuredly no such privilege was created by the law of slavery; (3) certainly attorneys were not classified as slaves. In his turn Williams is followed by Susan J. Becker in 1992 who claims that the origins of the attorney-client privilege can be traced to ancient Roman law because it prohibited a slave from revealing his master's secrets.⁴¹ In actuality attorneys' services were regarded as so distinguished and remote from ordinary slave labor that they were treated as *artes liberales*, "liberal arts," so lofty in esteem that

39. See W.W. BUCKLAND, *THE ROMAN LAW OF SLAVERY* (AMS Press, Inc. 1969) (1908). He does refer to Buckland, but his paragraph appears to owe nothing to that work.

40. Marshall Williams, *The Scope of the Corporate Attorney-Client, Privilege in View of Reason and Experience*, 25 HOW. L.J. 425, 426 (1982).

41. Susan J. Becker, *Conducting Informal Discovery of a Party's Former Employees: Legal and Ethical Concerns and Constraints*, 51 MD. L. REV. 239, 250 (1992).

For the influence of Schiller's article, see also L. James Harris & Irving H. Siegel, *Protection of Trade Secrets: Initial Report*, 8 IDEA 360 (1964); L. James Harris & Irving H. Siegel, *Trade Secrets in the Context of Positive Competition*, 10 IDEA 297, 298 n.5 (1966); see also L. James Harris & Irving H. Siegel, *Trade Secrets in the Context of Positive Competition*, in *NURTURING NEW IDEAS: LEGAL RIGHTS AND ECONOMIC ROLES* 82, 83 n.5 (L. James Harris ed., BNA 1969) (1957); EARL W. KINTNER & JACK LAHR, *AN INTELLECTUAL PROPERTY LAW PRIMER* 129 (2d ed. 1982); Steven L. Kroleski & David R. Rant, *Use of Customer Lists: A Unified Code is the Solution*, 15 WESTCHESTER BAR J. 189 (1988); Holly Emrick Svetz, *Japan's New Trade Secret Law: We Asked for It—Now What Have We Got?*, 26 GEO. WASH. J. INT'L L. & ECON. 413, 415 n.17 (1992).

they could not be the subject of a contract when performed by a free person.⁴² That Schiller's article, which is not mentioned by Williams or Becker, was their springboard is evident from their argument that the attorney-client privilege arose in the context of slave law, precisely where Schiller oddly puts the protection of trade secrets. The quotation from Williams shows that his starting point is, indeed, the protection of the slave owner's secrets in general.

I am thrilled by Schiller's success, and he would appropriately see the continuing popularity of his paper as a triumph for Roman law scholarship, of which I am an aficionado. However, I do wish he had entered a *caveat*, or discussed the action on theft and similar possible, but unused, remedies for the misappropriation of trade secrets. Still, I am comforted by the knowledge that Schiller's article has a long and productive life still before it.

The arguments of this paper have, of course, wider implications. First, they indicate how dangerous it is for scholars to rely on secondary sources as they so often do.⁴³ Second, they illustrate the difficulty of building up a theory of legal borrowing: an apparent, and widely-accepted borrowing may be a nonborrowing.⁴⁴

42. See KÁROLY VISKY, *GEISTIGE ARBEIT UND DIE "ARTES LIBERALES" IN DEN QUELLEN DES RÖMISCHEN RECHTS* 46 (1977).

43. For one example, see the discussion of Simon Schama on Grotius by ALAN WATSON, *JOSEPH STORY AND THE COMITY OF ERRORS* 75-76 (1992).

44. See, most recently, Alan Watson, *Aspects of Reception of Law*, 44 *AM. J. COMP. L.* 335 (1996).