BOOK REVIEW

HISTORY AND INSTITUTES OF ROMAN LAW. By Andrá Földi & Gábor Hamza. 5th ed. 2000. Nemzeti Tanköyvkiadó, Budapest, Hungary. XL, 715 Pp.

Reviewed by Francis A. Gabor*

This textbook on Roman law, which can be viewed as a 'Handbuch' in the German sense, rather than a usual textbook, was first published in November 1996 by András Földi and Gábor Hamza and was recently published in its fifth revised and enlarged edition in September 2000.[1] The authors make a great first impression with their choice of book cover, showing a lifelike, colorful reconstruction of the *Forum Romanum*. The depiction suggests that Roman law is not a ruin of the past but is to be reconstructed as part of our present and future.

The original character and the broad theme covered by this remarkable book are reflected in its title: *History and Institutes of Roman Law*. The History of Roman Law, which is a mandatory discipline of the law school curriculum in many European and other civil law countries outside of Europe, treats the external history or *äußere Geschichte*, comprising the history of constitutional framework as well as the history of legal sources of ancient Rome. In this text, autonomous chapters are devoted to such topics as the international relations of ancient Rome, the Roman concept of law, and the subsequent history of Roman law in the Middle Ages and in the Modern World. András Földi and Gábor Hamza go beyond history and address institutes, the systematic and dogmatic presentation of Roman law, which should not be confused with legal institutions.

The size and the coverage of this textbook significantly exceeds any Roman law textbooks previously published in Hungary, and considering its exceptionally rich documentation, the text takes an illustrious place in the bibliography of international treatises on Roman law. Among today's

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1. The New Sixth revised and enlarged edition, published in July 2001, English translation, is forthcoming by the Kluwer International Publishing House (XL, 716 Pp.).

handbooks, it can be compared with the revised version of the classic Jörs-Kunkel-Wenger textbook (reworked by Honsell, Mayer-Maly and Selb).[2] The Hungarian textbook, however, gives the reader considerably more than the Jörs-Kunkel-Wenger textbook by treating a number of Roman legal institutions also from the viewpoint of their contemporary significance.

The textbook's exceptional advantages are its logic and consistent classification of the material, which is fortunately stressed not only by the hierarchical system of titles, but also by the consistent, high quality typography.

In the introductory section of the book, the authors list an extensive general bibliography of Roman law related works, including a number of the most recent publications.[3] The special bibliographies before each of the sixty chapters contain some works published even in 2000. In the historical part of the treatise,[4] the authors present the Roman state and administration in a detailed way, considering every single period. The discussions, which are in many ways original, help serve the researchers of the history of public law and the history of administration with considerable information.

The main novelty of the historical part of the textbook is, however, the surprisingly wide-ranged and data-rich presentation of the continuity of Roman law. The chapter embracing the subsequent history of Roman law begins with the Middle Ages and continues through our modern era. Geographically speaking, the textbook extends to all of the continents except Australia and Antarctica. This voluminous section's approach to the subsequent history of Roman differs from the well-trodden paths. It can be viewed as a brief comparison of different jurisdictions retaining significant Roman law influences. This chapter can be used as a concise encyclopedia of comparative law.

The reader can find out, for example, which sources have been taken into consideration during the process of drafting the Civil Codes of Louisiana, Quebec, and different Latin American countries. Readers also can follow the way Roman has reached South Africa and Sri Lanka, and the role Roman law played in influencing Roman-Dutch law in these countries. The authors also have analyzed the various forms of the effects of Roman law on the development of law in the United States. The authors have managed to condense almost all of the European and

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2. H. HONSELL ET AL., ROMISCHES RECHT, AUFGRUND DES WERKES VON P. JORS (1987).

3. ANDRÁS FÖLDI & GÁBOR HAMZA, A RÔMAI JOG TÖRTÉNETE ÉS INSTITÚCIÓI [History and Institutes of Roman Law], at xxvi-xxxiv (5th ed. 2000).

4. *Id.* at 3-150.

some non-European countries' private law history into only a few pages, including names, data, and an abundant bibliography.

It is remarkable how much work is concentrated into this chapter. Further, the information, which was collected from a wide range of authoritative sources, is properly arranged. This section of the textbook is equal to or surpasses the value of an encyclopedia of comparative private (civil) law. In this regard, the authors have achieved a unique synthesis, even on the international level. They emphasize the remarkably enduring and embracive influence of Roman law on the European legal tradition. Here, we learn that the center of the Roman law-cultivation has returned to a considerable extent in the twentieth century from its age-long wandering to Italy, after its partial reception and high-level cultivation in France, the Netherlands, and Germany.

Additionally, within the frame of the historical section, the authors pay attention to the history of canon law and private international law. Also in this part, the authors provide precise definitions of a number of legal notions having fundamental relevance like legal (juristic) relation and legal institution (*Rechtsinstitut* in German, *institution juridique* in French). Finally, the attention of the reader is turned to the thought-provoking discussion about the relations of law and morality, particularly regarding the concept of equity.

The major part of the textbook is about the presentation of the institutes, with the following structure: Procedural Law, including an outline of criminal procedure; Law of Persons and Family Law; Law of Things; Law of Obligations, with an appendix on criminal law; and Law of Succession. All five institutional sections contain an autonomous chapter on the continuity and subsequent fate of the legal institutions discussed.

The authors combine historical and dogmatical methods in their presentation of the "Institutes." The historical method primarily appears in the presentation of the legal institutions' formations and the special stages of their development. The dogmatical analysis is not neglected, but instead it takes an almost absolute priority. The dogmatical analysis considerably relies on the classical dogmatical system, worked out mainly by the representatives of the German historical school of jurisprudence. The analysis undertaken by the authors of the textbook not only imitates, but in some instances reconsiders, the achievements of the German historical school of jurisprudence.

In the section entitled Procedural Law,[5] discussions about the term *actio* are brought to light as important to contemporary lawyers. The understanding of different judicial procedural forms is presented by publishing one dozen "praetorian formulas." These formulas which can be likened to the writs in English medieval law, are essential in understanding not only the procedural law, but also the system of substantive law rules. From the modern jurist's point of view, special attention should be paid to the comprehensive analysis of the subjective and objective meaning of the term *bona fides*. The way of looking at the presentment of executive procedure and non-judicial procedure is original. The textbook describes the Roman antecedents of the public notary (*tabularius, tabellio*) by sketching the continuity of this institution from the Middle Ages to our modern era.

In the section entitled Law of Persons and Family Law,[6] the discussions about the concept of family and kinship contain many original ideas, especially the accurate presentation of the terms *familia proprio iure* and *agnatio*. In the part treating the Law of Things,[7] the wide analysis of the term *causa*, which extends to the continuity as well, is truly notable.

In the part dealing with the Law of Obligations,[8] the authors have shaped a logic and modern system. The discussions about validity and efficacy of the legal transaction, damages, and civil liability are important, even from the point of view of the modern civil law and legal philosophy. The presentation of *actiones adiecticiae qualitatis* is also valuable and original. Discussions about the rules and continuity of *societas* or partnership should attract the modern corporate lawyer's attention. As to the other parts of the section Law of Obligations, the detailed presentation of *crimina* or crimes in the Appendix on Criminal Law is particularly worthwhile.

In the section treating the Law of Succession,[9] the authors provide remarkable discussions about the legal relationships in the law of succession and about the validity and efficacy of the testament that are based on a detailed research of sources, Here, the authors raise some basic questions that should be answered by experts of civil law. The presentation of the background of the conceptual history of the law of succession is also unique.

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5. Földi & Hamza, *supra* note 3, at 151-202.
6. *Id.* at 203-72.
7. *Id.* at 273-378.
8. *Id.* at 379-592.
9. *Id.* at 593-668.

The most important virtue of the dogmatical sections is the answering of questions which emerge on the basic level but whose answer cannot be found in other textbooks. In this way, the authors skillfully link problems of Roman and present day law, leading to a better understanding of several institutions of contemporary legal systems.

The authors emphasize that the Roman jurists had an advantage over the lawyers of our era. This advantage was due to their way of thinking, which was less determined by legal rules of strict implementation. Their approach to law was, as a result, considerably more flexible.

Despite the rigorous scholarly effort made by the authors, the textbook also has a few shortcomings. For instance, the Roman regime of the law of inheritance was not exhaustively analyzed. Hopefully, the authors will treat this extremely large subject in later editions of the textbook in a more detailed manner. Similarly, the reception and the subsequent fate of the Roman law is to some extent unevenly dealt with. The authors paid less attention to the subsequent fate of the law of persons than the analysis of the subsequent fate of the law of obligations.

Summing up, the characteristics of the work under review, the textbook of András Földi and Gábor Hamza is impressive in erudition and imaginative in argument and offers the reader an up-to-date treatment of the Roman law and a partial treatment of the history and dogmatics of the modern private law that is outstanding, even on an international level. The authors have combined the scholarly and systematic treatment of the material, displaying an astonishing range of knowledge and clarity of exposition. Differing views or opinions are quite often alluded to and contrasted when the occasion demands.

This work is outstanding not only because of its modern and original character, but also because it contains an astonishing array of information. One of the greatest strengths of the *History and Institutes of Roman Law* lies in the copious collection of the sources, which are not limited to antiquity or of pure Roman law. The volume's three indices include a long and valuable index of sources, an index of names, and subject index. Both practicing lawyers and those who are interested in theoretical questions of law will find this textbook an indispensable reference work.

As for the recognition of this textbook in Hungary, the reviewer has to mention the fact that this work is referred to in the judicial practice as if it were a "book of authority." Moreover, it is worth mentioning that this textbook recently received the Award "The Best Legal Textbook" granted by the Eötvös Loránd University in Budapest.