

Washington University Law Review

Volume 13 | Issue 3

January 1928

Review of “Handbook of Roman Law,” By Max Radin

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Recommended Citation

Israel Treiman, *Review of “Handbook of Roman Law,” By Max Radin*, 13 ST. LOUIS L. REV. 226 (1928).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol13/iss3/19

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the Rule, Chapter 17. A feature is Chapter 11, dealing with Statutory Proceedings Which Minimize the Inalienability Caused by the Existence of Future Interests, a very desirable addition.

This book is a forward looking presentation of a difficult field of law, which has always been hampered by too much conservatism. It builds on the contributions of previous scholars in the field, giving enough of the indispensable source material, of the past, but not slavishly bowing to it. It opens up to the student what has been done to relieve from the handicaps of the old rules, and puts him on inquiry for further improvement. It is a distinct contribution to the teaching material in the field of future interests.

CHARLES EDWARD CULLEN.

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HANDBOOK OF ROMAN LAW. By *Max Radin*. Hornbook Series. St. Paul: West Publishing Co., 1927. Price, \$4.50.

Here is an unusual addition to the familiar Hornbook Series. One feels, at the outset, that one must approach it a little more patiently and respectfully than one does the other volumes that are to be found in the legal nursery of the West Publishing Company. One feels—even if one has only the slightest idea of the complexity of materials and the centuries of scholarship that have gone into the study of Roman Law—that it would be something like sacrilege to open Dr. Radin's book, "hornbook" though it be, with the popular demand, "Tell me all and tell me quick!"

And yet one wonders—before opening the book—whether, after all, the sacrilege has not already been committed by its learned and reputable author. One thinks of the great tomes of Mommsen and Savigny and one wonders what their authors would say of a scholar who attempted to compress the whole vast universe of the *Corpus Juris* into a few dozen tabloid paragraphs. Had the attempt been made by some quack scholar of the Tabloid School, the offense might be overlooked. But to have been made one of the *gelehrte*, by one of the dignified patricians of the Old School—"Et tu, Brute!"

One must wonder also what sort of a reaction this book will have on the other side of the camp—on the piepoudrous rank and file of our American lawyers and law-students. It is said, but the rumor has not yet been verified, that there exists a law school somewhere in the Middle West which still regards a course in Roman Law as an essential part of its regular curriculum. It is nevertheless safe to assume that to the great majority not only of our *juris studentes*, but even of our *juris prudentes*, the law of ancient Rome appears either as a mysterious ghost, from which it is wise to stand at a safe and respectful distance, or else as a great oracle that talks a lot of foreign gibberish but now and then drops a phrase or a maxim that sounds good, even if it doesn't mean anything. These will undoubtedly greet Dr. Radin's book with one simple and stubborn query—*cui bono?*

But whatever reception Dr. Radin's book will receive (and the West Publishing Company must be heartily congratulated on thus taking the risk), Dr. Radin need have no apologies to offer—either to the patricians or to the plebeians. For the truth of the matter is that he has done a splendid piece of work—probably the best elementary review of the leading concepts of Roman law that has yet been written or translated into the English language. As a piece of writing it is far superior to the oatmeal pap of its companion "Hornbooks," while as a work of erudition and scholarly analysis it deserves a place on the shelf beside Girard's famous *MANUEL DE DROIT ROMAIN* and Professor Buckland's immense *TEXTBOOK OF ROMAN LAW* (Buckland's book, incidentally, is anything but pleasant reading, while the Frenchman's still remains untranslated.)

One of the great advantages in reading Dr. Radin's book rather than any of the other English works on the same subject lies in the comparisons and contrasts between Roman Law and modern Anglo-American law, with which the author so frequently illustrates his observations. The result is not only to make the reading more interesting to the English and American reader, but also to impress the reader with the influence which Roman Law has had upon our legal system. Just how much that influence has been is still, of course, a matter of great controversy among the legal historians. Whatever its exact extent, however, the evidences of a sufficient influence to justify the encouragement of some study of Roman Law on the part of American law students are too numerous for argument. A very striking illustration, supplied by Dr. Radin, may be seen in the following development of one of our leading rules in the law of bailments.

In the second century B. C. Roman Law had already adopted a rule that a man "who drove a borrowed beast to a different place from that where he had agreed to use it, and likewise one who drove it further than the point he had borrowed it for, was guilty of theft." (At that time theft was simply a civil action against the tort-feasor on the part of the owner.) This rule was cited about the year 150 B. C. by Marcus Junius Brutus, and formulated by Quintus Mucius (100 B. C.) in the following words: "If a thing is given to any one for safe-keeping and he uses it, or if he has got it for use and he uses it otherwise than for the purpose for which he got it, he renders himself liable to an action of conversion." Both these citations are quoted by Labeo, who wrote about 1 B. C. The rule is again announced by Pomponius and by Gaius (150 A. D.), and is illustrated by the example of a horse driven beyond the place where the borrower had agreed to drive it. Again Ulpian and Paul (225 A. D.) repeat the rule in a general form. Finally, in the Institutes of Justinian (533 A. D.) the passages from Gaius are incorporated practically without change, as also in the Digest.

Leaping now over the centuries we find that in the New Jersey case of *Raynor v. Sheffler*, 79 N.J.L. 340, 75 Atl. 748, decided in 1910, the facts were as follows: "Sheffler borrowed the mare to go to Hackensack. . . . In fact, he drove to Hackensack, a distance of four miles, and then, instead of returning by the direct route, he drove a very considerable further distance." The animal was injured by an unavoidable accident. The court below found that the borrower was not responsible. In reversing this decision, the Supreme Court announces "the rule of law that, if the thing borrowed is used . . . in a different way or for a longer time than was agreed by the parties, the borrower is guilty of conversion." In support of the rule the court quotes Story on Bailments, sec. 232. Story, in turn (1832) quotes two French jurists, Pothier (18th century) and Domat (17th century) as well as the Digest, 13, 6, 18, pr., which is a citation of Gaius. But, above all, Story quotes *Coggs v. Bernard*, 2 Ld. Raym. 909, decided by Holt in 1702, in which the systematic exposition of the law of bailments is taken almost verbatim from the Institutes of Justinian!

Instances such as the one just given abound in Dr. Radin's modestly-titled book. Some of them, indeed, will furnish no little surprise to the chauvinistic common-lawyers of the school of Coke and Blackstone. Thus, we learn that even the famous maxim, "Every man's house is his castle," cited by Coke, 5 Rep. 92, and generally regarded as peculiarly English doctrine, comes directly from the Roman Law—*Nemo de domo sua extrahi debet*. Dig. 50, 17, 103.

All in all, therefore, Dr. Radin's "Hornbook" must be pronounced a highly creditable effort toward a more intelligent study and appreciation on the part of American students of the great legal system that shares and is interwoven with our own in the pattern of justice that has been adopted by the civilized peoples of this world. Moreover, the book is particularly opportune in view of the fact, as Dr. Radin suggests, that "the most obvious movement in law at the present time is the gradual assimilation which is taking place between the modified Roman Law of most modern countries and the only system that can pretend to

rival it, the common law of England, the United States, Canada, and Australia.”
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CASES ON THE LAW OF CARRIERS. Second edition. By *Frederick Green*, Professor of Law, University of Illinois. Pp. xxv and 829. St. Paul: West Publishing Company, 1927.

Five hundred twenty-four of the pages in the new edition are practically identical with the same portion of the first edition and, as few of the familiar leading American cases fail to appear among the reported cases or the citations in the notes, the reprinting of this portion furnishes, on the portion covered, satisfactory materials for teaching the subject matter involved. The foregoing part of the text includes the general principles involved; Introductory Topics on the Nature of Carriage and Common Carriers; The Carrier's Undertaking; The Obligation of the Shipper; and The Exceptional Liability of a Common Carrier. While it is a matter of opinion whether it would be better to more completely separate the rights and obligations of the common carriers of goods and the common carriers of passengers, it seems to the writer that they should be handled separately. As Professor Green's book has been in use since 1910, however, it would seem that his arrangement had met the test of time.

Professor Green has introduced into his second edition an abundance of new material in the last 300 pages of the text. In the new Part V he has taken the portions of the Pomerene Act and treated them under five headings in as many chapters, as follows: Negotiation and Transfer of Documents, Delivery of Goods, Misdemeanor, Attachment, and Lien. In developing these subdivisions he has used the latest and leading cases interpreting the act. About sixty pages are devoted to this division.

Next comes the new Part VI, covering the statutory developments in the field of regulation since the former edition. Here we have a choice selection of cases and excerpts from the Act to Regulate Commerce and the various amendments thereto, with citations to the U.S.C.A. The sections of the act setting forth the nature and purposes of regulation, the changes in policy which are set forth in amendments, and the leading cases interpreting them, like the *Dayton-Goose Creek Railroad case* and the *Railroad Commission of Wisconsin v. Chicago, Burlington and Quincy Railroad Co.*, are included in concise form. The statutory development of control is further carried out in the remaining chapters on Equality in Service and Rates; The Carmack and Cummins Amendments and Federal Occupancy of the Legislative Field; Adequate Service; Reasonableness of Rates; and Remedies and Enforcement, divided into Control of the Commission over the Carrier, Control of the Court over the Carrier, and Control of the Court over the Commission.

The new material in the last three hundred pages brings the text down to date and affords the users of the book the modern viewpoint without which the older edition had become of less value. Whether the modern statutory limitations on liability, for example, might not better have been brought in at a corresponding point in the portion of the text which has been left unaltered is again a matter of opinion. To the writer it would seem to have been better to have rearranged the material, placing the later developments in sequence to the earlier decisions. As arranged, it would seem that one using the book would have to use two portions at the same time, and the valuable additions in the new part are much too numerous and well selected to be used as an appendix. Under the portion given to Control of the Commissions by the Courts several cases involving utilities other than carriers are included, such as the *Bluefield Waterworks case*, but apparently only to illustrate phases of rate-base determination.