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Book Review: The Human Measure: Social Thought in the Western Legal Tradition (1990)

Alan Watson
University of Georgia School of Law, wawatson@uga.edu

BOOK REVIEW

KNOW THYSELF: MAN THE MEASURE—*IMPLUMES AVES VOLITANT*. A REVIEW OF DONALD R. KELLEY, *The Human Measure: Social Thought in the Western Legal Tradition* (Harvard University Press, Cambridge, Mass.: London, 1990), pp. xiv + 358. $35.

Alan Watson

On this book eminent academics have already pronounced. Gerald Strauss writes on the dust cover: "On nearly every page the author gives evidence of solid and deep learning. Kelley must have read the works of every major jurist, and of most minor ones as well. His interpretative judgments are rendered confidently throughout." And A.T. Grafton: "This is an astonishing book—astonishing in its range of learning, its force of argument, its eloquence and its appeal . . . . He mobilizes a fantastic range of primary and secondary sources, all of which he knows at first hand."

Against these judgments I must protest, for the dignity of the subject.[1] *The Human Measure* is not a work of learning. Kelley does not know at first hand the most basic primary sources, let alone the secondary literature. And he is remarkably careless. The book's publication, especially by an academic press, is a defeat for scholarship. The extravagant, and entirely misleading, praise of the book indicates that Professors Strauss and Grafton have not read the book, or are unable to judge its worth, or themselves have little acquaintance with the primary sources, or a combination of the above. They owe academia an explanation for their misguided stamp of approval.

I will restrict my comments in this essay to two chapters, chapter 3, 'Roman Foundations', and chapter 4, 'Byzantine Canon', partly because they concern the field I know best, partly because, given the historical importance of Roman law and Justinian's *Corpus Juris Civilis*, they are fundamental. Indeed, if the author gets these chapters wrong there is no way for him to get subsequent chapters right since

[1] My father, who left school at age twelve, taught me that scholarship is sacred. I dedicate this review essay to his memory.

in large measure they are contrapuntal to these early chapters. It is also better to indicate something of the numbers of basic mistakes that the author can make within a few pages (though I will still be selective), rather than choose a few each from various chapters. I will also restrict myself to clear mistakes of fact: so far as possible I will seek to avoid pronouncing on Kelley's judgment.

Let me gloss one central paragraph.

> The impulse toward legal system had already been implied in the "revolution" of legal science inaugurated in the second century B.C., but carrying out such a utopian plan depended ultimately on strong central authority. On the ides of March[a] in the very first year of his reign (13 February 528) Justinian began to transform the old aspiration of "reducing law to an art" into a quasi-religious mission. He appointed a committee of ten jurists, headed[b] by the Quaestor[c] Tribonian, to survey the riches of the jurisprudence of the "Romanoi"[d] and on this basis to form a code which would bring law and order to his Empire. The work was accomplished in the amazingly short space of four years.[e] The centerpiece was the Digest (or Pandects), a vast anthology of classical jurisprudence containing excerpts from thirty-nine authors drawn from the reading of some three million lines and arranged according to traditional categories and rubrics. The Institutes was a textbook, a sort of digest of the Digest[f] following the plan of "our Gaius," while the Code was a collection of recent legislation.[g] These works, published from A.D. 530[h] on, constitute the sacred canon of civil law, in a sense the funeral monument of Roman jurisprudence, the model of virtually all subsequent structures of Western law,[i] and in many ways the prototype of systematic social thought. (pp. 54f)

(a) For "March" read "February."

(b) No. Tribonian was not the head of this committee.

(c) No. Tribonian was not then *quaestor*, but *magister officiorum*.

(d) No. The team was instructed to collect the constitutions of the Emperors.

(e) 13 February 528 to 16 November 534 (date of publication of the *codex repetitae praelectionis*) is not a period of four years.

(f) If the *Institutes* is to be categorized as a digest, it would be a digest of the *Digest* and first *Code*. But it is misleading so to categorize it, since it is modelled on Gaius' *Institutes* which was written centuries before the *Digest* was even thought of.

(g) A "collection of recent legislation" does not describe the *Code* of 534 A.D. The *Code* contains 4683 imperial rescripts. Of these, 2664, considerably more than fifty per cent, date from before the

reign of Constantine (307-337) when Christianity was officially recognized. The earliest go back to Hadrian whose reign ended in 138 A.D.

(h) No. The first *Code* was published on 7 April, 529 with legislative force from 16 April of that year.

(i) These works were not "the model of virtually all subsequent structures of Western law." Nor could they be, because as is well known and has been frequently emphasized throughout the centuries, the *Digest* and *Code* are remarkably unsystematic.[2] The phrase applies only to the *Institutes*, and even then is an exaggeration.

My problem with the book, as will already be apparent, is not just the lack of scholarship, but the absence of any interest in accuracy.

To point to individual errors in the paragraph is, however, misleading. The whole thrust of his paragraph is wrong. The compilation of *Code*, *Digest* and *Institutes* was not conceived as a unit. Between the publication of the first *Code* and the order (dated 15 December 530) for the compilation of the *Digest* under a new team of sixteen men headed by Tribonian, there elapsed a period of nearly two years. Even more significantly there seems to have been a pause of nearly a year after the promulgation of the first *Code* and the beginning of work on the *Fifty Decisions* (which have not survived). These were Justinianian rescripts intended to settle disputes that had existed between classical jurists. They were thus a preliminary to the *Digest*. If the *Digest* had been in contemplation during the work on the first *Code*, the *Fifty Decisions* would have been promulgated then and incorporated into the *Code*. Indeed, it was very largely the need to incorporate (most of) them into Justinian's legislation that led to the preparation of the second *Code*, the *codex repetitae praelectionis*.[3]

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[2] Thus, in his famous LES LOIS CIVILES DANS LEUR ORDRE NATUREL (first published between 1689 and 1697), Jean Domat's grand plan was to set out a scheme of Christian law for France in an easily comprehensible arrangement. He claimed that he drew up the plan of the book and the choice of subject matter (based largely on Roman law) because the natural law of equity lay in Roman law, and because the study of Roman law was so difficult: TRAITÉ DES LOIS, chapter 13, especially paragraph 10. A satisfactory system to enable one to find the law was also the main motivation behind Prussia's Frederick the Great's PROJECT DE CORPUS JURIS FREDERICIANI (published between 1749 and 1751). He declared roundly in the preface, paragraph 15, that Justinian's compilers had formed no system.

[3] For Justinian's legislation in general see H.F. JOLOWICZ AND B. NICHOLAS, HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW 479 (5th ed. 1972).

Kelley's stress in this paragraph on religion is misguided, whatever he may mean by "a quasi-religious mission" and "sacred canon." I am not questioning Justinian's piety, but the authors of the *Digest* texts were all pagan, as were the emperors who issued the majority of the rescripts in the *Code*.

In fact, Kelley throughout these chapters misunderstands the relationship between religion and Roman private law. He claims that Roman civil law was grounded in *fas* (sacred law) (p. 38), that "the Twelve Tables contained 'sacred' as well as civil law," (p. 40) and that "the sacred phase of the legal tradition culminated in the work of the great members of the Mucian clan — P. Mucius Scaevola, P. Licinius Crassus Mucianus, and Q. Mucius Scaevola, all of them *pontifices maximi*." (p. 41) Now, all of this is just nonsense. Whatever the original connection between *ius* and *fas* might have been, the outstanding characteristic even of early Roman private law is that it is remarkably secular. Oaths, religious observances, sacrifices have no place, I repeat no place, in law such as formation of contract, acquisition of property or in the beginning of marriage.[4] The *Twelve Tables* rigorously exclude sacred law. There is nothing in them about the ranking or duties of priests, consecration of temples, order of sacrifice, formalities of prayer, religious elements in declarations of war, or about private family rites. The one known provision that relates to a priestly office, that of Vestal Virgins, very significantly regulates a condition of private law, namely that they were to be free from paternal power.[5] Sacred law did not culminate in the Mucii. Publius Mucius Scaevola, indeed, developed a legal dodge whereby certain individuals could avoid performing the regulatory private sacred rites, conduct scarcely becoming a holy man of religion.[6] Q. Mucius Scaevola's commentary on the civil law contains, in the surviving fragments, no trace of sacred law.[7] Certainly, as Kelley notes, the interpretation of the *Twelve Tables* was entrusted to the College of Pontiffs. (p. 41) But he apparently does not understand the significance of this. To become a pontiff was in no sense a sign of personal piety. It was one step, like many others in a political career. It is beyond dispute that the *pontifices* did not try to insert

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[4] Except for the very limited ceremony of *confarreatio*.

[5] G. INST. 1.145. There are, however, a few provisions of a criminal type relating to magic or involving a sacred penalty: *Tab.* 8.1; 8.8; 8.9; 8.21; 8.24; 12.4.

[6] CICERO, DE LEGIBUS 2.47-53.

[7] The surviving fragments are conveniently set out in 1 O. LENEL, PALINGENESIA IURIS CIVILIS, 757 (1889).

religious notions into private law.[8] More to the point for the growth of private law, one should emphasize that all three of the Mucii held the secular office of praetor which was the most important public office for the development of law.[9]

Possibly close to religious ideas are philosophical ideas, especially perhaps about natural law. Kelley claims: "What gave shape and direction to the Roman idea of law from the late republican period was ultimately the grandiose idea of universal Nature," and he points to the contrast between natural law and civil law. (p. 47) This, like other grandiose statements of Kelley's, is an absolute reversal of the truth. There is just nothing to support the assertion in the passage quoted. In fact, it is so bizarre that I cannot imagine how he reached that conclusion. Natural law plays no active role in Roman private law. Slavery is the one institution that is said to be contrary to natural law but to be part of the *ius gentium*.[10] But no conclusions, not even the slightest, are drawn from this. It is not then claimed that slavery ought to be outlawed, or even that the institution is immoral. Slavery occupies a prominent place in Roman law. The significance of natural law in the Roman legal sources is precisely its total lack of significance. Philosophers developed theories of natural law, but the jurist, Ulpian (who is accepted by Justinian), defines natural law as the law that humans share with other animals.[11] But, as has often been observed since, this is not law at all, but instinct.[12] Why, then, did jurists choose this definition? Precisely to make the idea of natural law meaningless, to cut out any relevance of philosophical notions of the nature of law. The approach to law of the Roman jurists was entirely—let me stress, entirely—positivist.

To claim, as Kelley does, that from Gaius was preserved in Justinian's compilation "the idea of natural law as the ultimate standard of justice" or that "[i]n Roman law the religious element had always been prominent" (p. 53) is not only wrong but it betrays a lack of first hand knowledge of the texts. Gaius says virtually nothing[13] about

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[8] *Cf.* F. SCHULZ, ROMAN LEGAL SCIENCE 6 (1946).

[9] *See, e.g.*, W. KUNKEL, HERKUNFT UND SOZIALE STELLUNG DER RÖMISCHEN JURISTEN 12 (2d ed. 1967).

[10] CODE J. 1.2.2.

[11] DIG. 1.1.1.3; J. INST. 1.2pr.

[12] A. WATSON, *Some Notes on Mackenzie's* INSTITUTIONS *and the European Legal Tradition*, IUS COMMUNE 303 (1989).

[13] Unless one wanted to claim—wrongly—that in DIG. 1.1.9 Gaius uses *naturalis ratio*, 'natural reason', to mean natural law. In G. INST. 1.1 he states that *naturalis*

natural law, and the concept has no force in Justinian's compilation. There is nothing whatever in the evidence to suggest that natural law was regarded as a standard of justice, far less that it was the "ultimate standard." And I cannot find references to religion in the *Digest* or in most of the books of the *Code*.

Kelley's grasp of Roman legal terminology is very shaky. One might, at first sight, think that his "Proclian" for "Proculian" (p. 42) is a misprint even though "Proclian School" does appear in his index (p. 356), but this cannot be, because he makes precisely this mistake in an article he published in 1979 and reprinted in 1984.[14] The error is not insignificant. The Sabinians and Proculians were the two schools of jurists in the early empire, the terms occur frequently, as does the name of the jurist, Proculus, even in Kelley's own favored jurist, Gaius. The disputes between the schools were of major importance in classical law, and the main cause of Justinian's *Fifty Decisions*. To persist in such a basic mistake for at least eleven years betrays a staggering lack of attention to the sources. It is a pity that no one seems to have called the error to the author's attention.

He also writes: "From a priestly monopoly, legal interpretation became a public vocation; and through the members of this profession the so-called *ius honoratiorum*, practical incarnation of the *ius civile*, was given scientific form." (p. 41)[15] This is gibberish. By *ius honoratiorum*, a term that does not exist, he must mean *ius honorarium*, that is, the law contained in the praetorian Edict and interpreted by jurists.[16] But in no sense was this a practical incarnation of the *ius civile*, which equally was interpreted by the jurists. Indeed, the jurists in their writings kept *ius civile* and praetorian law strictly apart, and

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ratio established the *ius gentium*.

In G. INST. 1.156, when he says "persons related through the female sex are not agnates, but cognates related only by natural law" he means that for present purposes they are not related by law. In G. INST. 2.65, 66, 69, & 73 he states that alienation of property sometimes takes place by natural law, such as by simple delivery, or by capture from the enemy. There is no moral dimension to his use of *ius naturale*, nor even of *naturalis ratio*.

[14] D.R. Kelley, *Gaius Noster: Substructures of Western Social Thought*, 84 AM. HIST. REV. 619, 621 (1979) *reprinted in* D.R. KELLEY, HISTORY, LAW AND THE HUMAN SCIENCES (1984). He also has *ius Papiniarum* for *ius Papirianum* (p. 38), possibly as a recollection of the jurist, Papinian.

[15] *See also* p. 42.

[16] This would also appear from his "civil law and its honoratorial extension." p. 42.

this separation, in fact, played a role in preventing Roman private law from achieving "scientific form." He refers to: "The *honoratiores*, a new order of the 'priests of the law' (as Ulpian would call them)," (p. 44) and he cites *D.*1.1.1. But Ulpian was writing about jurists and they were never termed *honoratiores*. If Kelley is referring to the *ius honorarium*, then the authors of that were the praetors—and it is not the praetors who are termed "priests of the law" by Ulpian. The different roles of the Edict and of the jurists were fundamental for the shaping of Roman law. It is a mistake of the most basic kind to confuse them. This time one may be able to pinpoint the source of the misunderstanding. Kelley appears to have been misled by F. Schulz: "[T]he jurists of the archaic period were *honoratiores*, coming from the most respected Roman families." *Honoratior* is not a term signifying 'jurist,' but designates a high rank in society. Kelley seems to be caught relying on a secondary source (which he misunderstands), ignoring the primary sources.

But gross though this error is, there is another which shows at least as great an unfamiliarity with Roman law. Kelley believes that the Roman "*ius gentium* was an open and expanding system of international and comparative law." (p. 62) Or again: "[T]he human substance of civil law and that extra-Roman accumulation assembled and rationalized as the 'law of nations' (*ius gentium*)." (p. 61) Now, the term *ius gentium* as used in Roman law does not, and I repeat not, ever refer to international law, the law to be operated between states, nor is it an "extra-Roman accumulation" of law. The term is used in more than one way in the Roman legal sources, but has two basic meanings, both referring to Roman private law. First, *ius gentium* may be used to mean that portion of Roman private law made accessible to foreigners as well as to Roman citizens. Secondly, *ius gentium* may be used to mean that portion of Roman private law that has an equivalent in all other systems of law.[17] This is another fundamental mistake, resulting from a lack of acquaintance with the sources, that Kelley has persisted in for at least eleven years.[18]

I wish I could stop at this point, and say, well, Kelley has made some mistakes, mistakes that I regard as important, but basically the book is sound. The problem is that the mistakes just continue, one

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[17] *See, e.g.*, JOLOWICZ & NICHOLAS, *supra* note 3, at 102; J.A.C. THOMAS, THE INSTITUTES OF JUSTINIAN 6 (1975).

[18] Kelley, *supra* note 14, at 624, 637.

after another. It would be tedious to make an exhaustive list even from two chapters, but I ought to give a few examples.[19]

Discussing definitions or rules of law, Kelley claims: "some are idealistic ('liberty is to be prized above all things,' and 'slavery is comparable to death'.)" (p. 46) Again, this is all a mistake. The texts, which are both from the last book of the *Digest* entitled 'Rules of Early Law,' have nothing to do with idealism. *D.*50.17.106 (Paul, book 2 on the Edict) is better translated "Liberty is a thing that cannot be estimated." The original context related to jurisdiction. The higher officials heard cases above a certain sum plus actions affecting reputation (*actiones famosae*) and claims for freedom without regard for the amount involved, for "liberty cannot be estimated in money."[20] *D.*50.17.209 (Ulpian, book 4 on the Julian and Papian Law), "We compare slavery closely with death," is from Ulpian's commentary on a marriage law. The precise context is not certain, but Ulpian was not being idealistic. His point was not that slavery was as great an evil as death. The claim is that the legal effects of enslavement are closely akin to those of death: they end civil status, they both bring marriage to an end for example, they raise the same issues with regard to the return of dowry, and remarriage, and they open up succession. The most likely context for our text is succession between husband and wife.[21]

Kelley writes: "The foundation of Roman law was and in many ways continued to be "custom" (*consuetudo*; *ius non scriptum*.)" (p. 49) Again, this is false. No doubt, though there is no evidence, early Roman law was based on custom. But the remarkable thing is that in historical times, from at least the Twelve Tables in the mid-fifth century B.C., custom played a negligible role in developing the law. Only a handful of rules can be traced to an origin in custom; most are the result of juristic interpretation. When the Roman jurists list the sources of law they never include custom.[22]

"[T]he father was virtually king and god to his household," (p. 40) is breathtakingly wrong. In no way was a father regarded as a god, despite Roman ancestor worship. And that the Roman father

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[19] I should like to be properly understood. For this essay I have made only a selection from Kelley's mistakes and misunderstandings. I could write another review discussing just as many again, still restricting myself to chapters 3 and 4.

[20] *See* 2 O. LENEL, ZEITSCHRIFT DER SAVIGNY STIFTUNG 37 (1881).

[21] *See* 2 O. LENEL, PALINGENESIA IURIS CIVILIS 943 (1889).

[22] *See, e.g.*, A. WATSON, LAW MAKING IN THE LATER ROMAN REPUBLIC 169 (1974).

was regarded like a king is an unRoman notion, given the Roman hatred of kings.

Kelley states: "beginning as early as the elder (Q. Mucius) Scaevola they arranged legal materials into genera and species." (p. 46) No, they didn't, not at least as far as our evidence goes. There is no sign of any such arrangement by the jurists in the Roman republic at all, far less as early as Quintus Mucius. Quintus Mucius did distinguish *genera* of *tutela* (guardianship)[23] and *genera* of possession.[24] Servius Sulpicius also distinguished *genera* of *tutela*[25] and *genera* of *furtum* (theft).[26] But nowhere in the surviving writings of republican jurists is there the further subdivision into *species*, and without that the conceptual advance into categorization is incomplete.

A misunderstanding of a different kind is inherent in his "by the last law of the last table, 'whatever the people has last ordained shall be held as binding by law.'" (p. 38) That law does appear as the last law of the *Twelve Tables* in editions of this code from the 5th century B.C. But its placing is entirely conventional.[27] There is no evidence that it was situated in table twelve, far less that it was the final provision. Nor is there any evidence that it was in either of the last two tables which were the work of the second set of *decemviri*.

Many sentences are impossible to fathom, or at least they render no clear meaning. For example: "In civil law, marriage was based not on religion but on agreement, that is, human will, although the joining of wills—consummation—was not required for a 'just' union." (p. 39) The first half of the sentence is unexceptionable, though I do not understand its purpose in the context. But consummation is physical union, not the joining of wills. What readers are intended to make of "a 'just' union" I do not know, and I have serious doubts whether Kelley himself knows what he is saying. In Roman law *iustae nuptiae* meant a marriage between two persons who had *conubium*, the right of Roman marriage.[28] The Romans recognized the validity of other marriages, but only *iustae nuptiae* put children

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[23] G. INST. 1.188.

[24] DIG. 41.2.3.23.

[25] G. INST. 1.188.

[26] G. INST. 3.183.

[27] The convention may have arisen because of Livy's words in 9.34.6,7, the only passage that mentions the provision. But Livy does not justify the convention.

[28] *See, e.g.*, W.W. BUCKLAND, TEXTBOOK OF ROMAN LAW 104 (P. Stein ed., 3d ed. 1963).

into the *potestas* of the husband. The phrase *iustae nuptiae* does not mean "just" and has no connection with justice.

A characteristic of the book that is downplayed in this review—not deliberately, but because I do not want to give long quotations that I then discuss in general terms—is the author's predilection for grandiose concepts that seem to have little meaning, and are not grounded in the sources that are given as authority for them. But one sentence may supply the flavor: "'All definition is dangerous' is another juristic rule, implying that jurists ought to subordinate independent reasoning to the conventions of their professional tradition and world of discourse, and remain in their own province of the kingdom of Nomos." (p. 46) This sounds grand, and reflection on the author's meaning seems worthwhile. I am not sure that I understand the author's point, but, whatever it is, it is wrong! The text, *D.*50.17.202 (Javolenus, book eleven of Letters) reads: "Every definition in civil law is dangerous: for it seldom happens that it may not be overturned." Javolenus' point was simple and clear, and seems to me remote from Kelley's account: jurists, Javolenus is suggesting, should be careful in relying upon (or framing) legal definitions, because in most cases exceptions can be found. There is here no world view that jurists should "subordinate independent reasoning" or keep to their own province of law.

Kelley also builds up a grandiose picture of what he terms "anthropocentric jurisprudence"—a picture that has no basis in reality—on Gaius' divisions of the law in *G.*1.8; "'All the law which we use pertains either to persons or to things or to actions' (*de personis, de rebus, de actionibus*)." (pp. 48ff) Suffice it to say for the lack of importance to the Romans of this classification that it does not appear in the *Digest* or *Code*.[29] But it is typical of Kelley's inattention to detail that he renders Gaius' *ad personas*, *ad res*, *ad actiones* by *de personis*, etc.

This is not a minor objection. The inattention to detail is significant. For instance:

> The point of departure of Roman social consciousness seems to have been neither poetry nor cosmology, as it had been for the Greeks. Rather, as Henry Sumner Maine once observed, "Roman history begins, as it ends, with a code"; and the law of the Twelve

[29] For a just appreciation of this trichotomy *see, e.g.*, J.A.C. THOMAS, *supra* note 17, at 13.

> Tables must indeed serve the historian as a substitute for the Homeric poems and for all of the pre-Socratic philosophers. (p. 36)

Even if one were willing to accept Henry Maine as an authoritative guide to Roman law and social consciousness—and I most emphatically would not be[30]—the fact remains that this is a fundamental misunderstanding, and even misquotation, of Maine. Maine was not concerned with Roman social consciousness, but solely with law. What he wrote was: "The most celebrated system of jurisprudence known to the world begins, as it ends, with a Code." Indeed, to relate this remark to Roman social consciousness involves a further misunderstanding. Kelley divides his chapters into chapter 3, 'Roman Foundations,' and chapter 4, 'Byzantine Canon'. This later 'Roman' law code, that of Justinian, used in Kelley's supposed quotation from Maine to illuminate Roman social consciousness, is not Roman, but in his own division is Byzantine.

I will not spend space on Kelley's use of secondary sources. It is idiosyncratic in the extreme, and I believe that this is simply because he does not know the literature.[31] But I want to return to my first quotation from Kelley. If he had read with care any of the standard secondary works,[32] he could not have made his egregious errors. The lack of attention in these two chapters to secondary works is particularly significant, since only for Roman law and the *Corpus Juris Civilis* is there a significant secondary literature that could enable one to make a synthesis without the detailed, time-consuming and complex, examination of the original sources that is so absent from Kelley's work.

One final example to demonstrate Kelley's lack of acquaintance with the sources and literature, and his carelessness: in the first

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[30] *See* A. Watson, *The Law of Actions and the Development of Substantive Law in the Early Roman Republic*, 89 L. Q. REV. 387 (1973); *cf* R.C.J. COCKS, SIR HENRY MAINE (1988).

[31] But it should be pointed out that usually his reference is to a complete work, not to precise pagination, and it is frequently impossible to relate the work cited to his particular argument. Often, moreover, a wide ranging discussion seems to be based on a single secondary source. Thus, his discussion of Spanish medieval law (p. 58), which is full of misunderstandings, could all be taken from E.N. VAN KLEFFENS, HISPANIC LAW UNTIL THE END OF THE MIDDLE AGES (1968) (which is not highly regarded by scholars). Certainly, he has not really consulted the famous LAS SIETE PARTIDAS (which he refers to often) because he says it is "modeled after the Institutes," and it assuredly is not.

[32] *See generally* BUCKLAND, *supra* note 28; JOLOWICZ & NICHOLAS, *supra* note 3; J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW (1976).

footnote to his chapter 'Roman Foundations' he has; "Reference is always made to the Mommsen-Krueger edition of the *Corpus Juris Justiniani*, Digest, Code, and Institutes (abbreviated D, C, and I), photo-reproduced with facing translation by Alan Watson (Philadelphia, 1986)." (p. 291) For good or ill there was no translation of the *Code* or *Institutes* produced by Alan Watson.[33]

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[33] And the Digest translation was published in 1985.