

Review

ANNA DI ROBILANT, *THE MAKING OF MODERN PROPERTY: REINVENTING ROMAN LAW IN EUROPE AND ITS PERIPHERIES 1789–1950*. Cambridge: Cambridge University Press, 2023. Pp. 380. ISBN 9781108859844 (hbk). £105.00.

Contemporary property law in the civilian tradition is undoubtedly one of the greatest intellectual legacies of Justinian's project of the sixth century C.E., where an attempt was made to collate and update the existing Roman law into a set of books to be used in legal practice across his empire. Despite recent technological advances in matters as diverse as NFTs and blockchain, the basic structures and vocabulary of the law of property in a great number of legal systems across the world remain those invented by the Roman jurists Paul and Ulpian. Chief among these must be the Roman legal concept of *dominium* (ownership) and the suite of more limited rights (*iura in re aliena*) afforded to third parties by law over another person's property. And yet, no body of law can ever remain static. This is one of the great lessons provided by Roman law. To do so risks severing the golden thread that links a body of law and the society it governs, leading to revolution and decline. The story of the reception of Roman law into contemporary legal systems is a long and complicated tale filled with many twists and turns. It starts with the rediscovery of Justinian's compilation in northern Italy during the late medieval period, from where it becomes an important part of the narrative of state formation in Europe. Di Robilant's new book contributes substantially to this history by focusing on transforming the Roman law of property from the eighteenth century onwards. Although the period is not unstudied, this book provides an interesting and compelling account of an important intellectual shift in the legal systems of Europe and elsewhere about property and its purpose.

Physically, the book consists of an introduction and conclusion, which bookend seven substantive chapters. Ch. 1 lays the groundwork and explains the contours of Roman property law. It highlights the seemingly individualistic nature of Roman property law — always championing the position of the single owner at the expense of other parties who may have rights in the property — but also demonstrates that the realities on the ground may have been quite different, especially in the context of an Empire where a distinction was drawn between 'Italic' and 'provincial' land. This important chapter provides a solid foundation for the rest of the book. Chs 2 and 3 introduce the narrative theme of the book. Jurists of the eighteenth century faced intellectual hurdles in reconciling Roman law's individualistic conception of ownership with the legal and intellectual legacies of feudalism in medieval Europe. These two chapters are important for two reasons. First, they demonstrate how the Roman legal material had been interpreted differently in various historical epochs from the late medieval period onwards to bolster prevailing views on the nature and purpose of property law. The legal realities of feudalism, with its divided concept of ownership, as a product of early medieval Europe, had left an indelible imprint upon legal conceptions of property in Europe and provided a source of intellectual discourse compared to the Roman legal material. In the second place, they show how legal scholars of the eighteenth century and beyond set out to craft a new and more individualist interpretation of property, different from that of the medieval and early modern periods, based on Roman legal sources. These two chapters are particularly successful as they demonstrate how legal change occurs in response to social change.

Chs 4 and 5 examine the complexities faced by German jurists of the nineteenth century in transforming Roman law into a system of principles fit for codification and reflecting a world increasingly affected by industrial development and popular discontent. As students of European legal history will know, the nineteenth century was a period of great turmoil. The legal responses of various European powers to such events were to push through reformist civil codes in which the established rules of law were adapted to confront these issues. I found this a particularly engaging part of the book as it shows how statute law is not always the best vehicle for legal change. In ch. 6, the narrative focuses on the transplantation of the Roman law of property to South America in the nineteenth century. It contains an engaging discussion of the history of legal transplants, mainly from Spain and Portugal, where Roman legal rules remained in dialogue with earlier feudal concepts. I also found the discussions around nationhood and race illuminating as well as important. Ch. 7 takes a different approach. It surveys the impact of 'social critics' of the nineteenth and early twentieth centuries upon Romanistic conceptions of property law. I found

this aspect of the book fascinating and important as it successfully demonstrates the fundamental importance of the underlying Roman legal principles for understanding the works of these critics.

R.'s book is a wide-ranging analysis of several complex issues. It is engagingly written, and the author is clearly on top of the material. One of the many commendable features of the book is its outward-looking narrative. Instead of focusing on a European narrative alone, the author has contextualised these developments with reference to other parts of the world. This makes it a successful book and a good read. The consistently high-quality production of the book is in line with the standards expected from Cambridge University Press.

University of Edinburgh
p.duplessis@ed.ac.uk

PAUL J. DU PLESSIS

doi:10.1017/S0075435824000431

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