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ROMAN LAW: LINGUISTIC, SOCIAL, AND PHILOSOPHICAL ASPECTS

Part I. Linguistic Aspects

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An agent noun is narrower in meaning than the verb from which it derives (e.g., scriptor, professional writer, from scribere, "to write") and is usually confined to the extraordinary. Failure to recognize the difference in meaning between verb and noun commonly results in mistaken conclusions in every field of research.

2. The Action Noun 14

In the history of a language, the appearance of a noun to signify the action of a verb represents conceptualization of the activity and is of fundamental importance in studying the history of ideas. The emergence of an action noun is one of the most revealing developments in any branch of a culture. Conceptualization of many matters in Roman law often does not occur until the late classical period, or even the Middle Ages.

Part II. Social Aspects

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A socio-historical approach to Roman legal texts sheds light on the class of society to which they apply and on idiosyncratic features of its jurisprudence and cultural history. In the *lex Aquila*, the rules about damage to property have to be set against the edicts of the Republic's magistrates. Failure to recognize economic realities in ancient Rome resulted in misunderstanding the existence of intestacy. Only by taking stock of the have-nots in Roman society can we understand the Roman institution of a *filiusfamilias*.

4. Roman Society 89

The compact nature of upper Roman society illuminates: the harsh attitude to an insolvent debtor; the generosity accorded to a master's slaves and freedmen; the institution of *fideicommissa*, the device allowing you to leave your estate to a person that the law says you could not leave it to; and the stratagems whereby a woman with no dowry is represented as bringing one. In all of these dealings and dodges in the law, the preserve of the well-to-do are motivated by altruistic attitudes to get around irksome restrictions or disabilities.

Part III. Philosophical Aspects

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Greek philosophical ideas appearing in Roman sources reveal a practical bent as illustrated by the three standards of liability: *dolus* (evil intent), *culpa* (negligence), and *casus* (accident). A widespread fallacy about negligence is especially prevalent in scholarly circles.

6. Reductio ad Absurdum 164

Much favored by the Roman jurists, the mode of reasoning by reductio ad absurdum props up a decision by showing the alternative to be in striking contrast to the declared objective of the enterprise. The hypothetical consequence is so unacceptable that it confirms the correctness of the assertion. In modern jurisprudence this kind of argumentation is spoken of as result-oriented.

LEGAL CONCEPTS AND SOCIAL CONVENTIONS

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Changing meanings in politics and in religion of the words *suffrage, precedent, mercy* and *grace* uncover legal and cultural shifts. The Hebrew Bible, Greek literature, Roman law, Canon law, Shakespeare, and contemporary documents illustrate.

8. Withdrawal: Five Verbs 202

Explores the origin and history of five verbs: (1) *Recantare*, "to recant" in the XII Tables. (2) *Resilire*, "to resile," "to leap back," and "to withdraw." (3) *Retractare*, frequently used in the sense of "to retract" but "to go over something again" is confined to a few legal contexts. (4) *Renuntiare*, "to send word rescinding, calling off, refusing," and also, "to refuse in person," and "to forgo something one likes." (5) *Repudiare*, "to repudiate" links "to make or be ashamed" but becomes less circumsribed as in to repudiate care or misery.

Part V. Greek and Roman Reflections on Impossible Laws

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Ancient jurisprudence displays much interest in unjust, immoral, and unreasonable laws but very little interest in impossible laws. The problem of the latter assumes many guises: whether the civil law has power over the rights of blood relations or a lawgiver has power to extend to new situations a concept like theft, homicide, or usufruct.

10. Interference with Natural Rights 234

Poses a problem as to whether widening the power of natural rights, or the concepts underlying them, misrepresents reality and is therefore unacceptable. Or, does an expansion of the power of natural rights reflect a different or additional reality that is acceptable?

11. Interference with Facts and Concepts 254

Attempts to get rid of logical impossibility in the art and rules of interpreting statutes because jurists are unwilling to admit its existence.

12. Interference with the Past 287

There is a variety of impossibility: laws intended to change the past where a hated ruler has not ruled at all (*damnatio memoriae*), or where the emperor, to rectify a person's servile birth, makes them freeborn.

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