

BOOK REVIEWS

THE DIGEST OF JUSTINIAN: TWO VOLUME SET. English translation edited by Alan Watson. [Philadelphia: University of Pennsylvania Press. 1998. 1536pp. Paperback \$69.95.]

In the summer of 1974 the present reviewer was appointed to his first academic post, as a probationary lecturer in the University of Aberdeen. Having had the benefit of an old-fashioned classical education (probably one of the last generation to do so), and having some background in Roman Law, it was hoped that he would be able to make good use of the Zulueta collection in the university library, and so carry on that great Romanist tradition for which the University of Aberdeen has so long been noted. Alas, it did not work out thus. He soon discovered that one cannot be a serious Romanist without also being a fairly accomplished linguist. In particular, one needs to have a working knowledge of the main continental European languages, and of Italian and German above all. The reviewer did not last long in post at Aberdeen, for it soon became clear that he would never be a proper Romanist.

The reviewer at least had Latin, but even this is now becoming less and less common. The decline of classical teaching in the schools must surely be a deterrent to the study of Roman law even at a basic level, for there is no access to the primary texts. For this reason the provision of good translations has become ever more and more important. There have been a number of these in recent years, and in particular the translation of the *Institutes of Justinian* by Peter Birks and Grant McLeod,¹ and of the *Institutes of Gaius* by William Gordon and Olivia Robinson.² These certainly fill a gap for the very basic student, but those who want to delve deeper into the subject require a good translation of Justinian's *Digest*. Until recent years there was no English translation of this available apart from that of S.P. Scott in 1932, which was rather unsatisfactory in many respects, besides having been long out of print. However, in 1985 Alan Watson's comprehensive new translation of the *Digest* was published in four volumes by the University of Pennsylvania Press, and a new edition of this, omitting the Latin text, has now been issued by the same publisher.

The *Digest* of Justinian contains well over a million words of text, and is considerably longer than the Bible, so compiling a translation was no easy task. The story of the project is given in the Introduction, and makes interesting reading, there being many striking parallels with Justinian's original compilation. Thus the Justinian of the project, who suggested and commissioned the work, was Dr Carleton B. Chapman, then President of the Commonwealth Fund, which generously provided the necessary finance. His Tribonian was one of the greatest Romanists of our day, Alan Watson, then Professor of Civil Law in the University of Edinburgh. Like Tribonian, Watson chose a team of eminent scholars to assist him, there being thirty translators in all including such renowned names as Peter Stein, Tony Honoré, Geoffrey MacCormack and Watson's old adversary J.A.C. Thomas.³ As with the original composition, the project was

¹ Duckworth, 1986.

² Duckworth, 1988.

³ Those who are familiar with the famous debate between Watson and Thomas on the meaning of *contrectatio* in the law of theft will be amused to see that Watson

completed in surprisingly quick time. The plan for the work was conceived in the spring of 1978 and finalised in September of that year; the translators were chosen by November, and told to complete a first draft by the end of 1979. Following this, each book once translated was sent to another member of the team for revision, after which the revised translation was in the hands of the editor by April 1980, scarcely two years since Chapman's original suggestion. There were a number of delays before the work was finally complete, but the full translation, together with the 1868 Latin text of Mommsen, was as we have seen finally published in 1985. Most decent libraries will now have a copy of this, but the price put it out of reach of anybody other than the most dedicated of Romanists. Hence the present edition which, while still not cheap, is within the reach of any academic who is interested in the subject. Though there have been one or two minor amendments, the new edition is largely identical to that of 1985, save that the Latin text is omitted. In addition, the opportunity has been taken to include a new translation (by Sebastian and Olivia Robinson) of the *Dedoken*, the Greek version of Justinian's preface *De Confirmatione Digestorum*.

It would be inappropriate to say the least for a failed Romanist such as the present reviewer to even attempt to judge the accuracy of the translation.⁴ However, some general points can be made about its user-friendliness. Needless to say, the print is very small - less than eight point on some pages (this size) which makes reading rather difficult without a magnifying glass - but that is a price that has to be paid for keeping the cost under control. A more serious problem is the lack of page numbers after the introductory sections and of any reference in the running heads as to where one happens to be; this leads to much time-consuming turning of pages to and fro in order to find the correct Digest reference for the text being read.⁵

One of the most intractable problems in any translation is how to deal with technical terms. In the present work this problem was exacerbated by the need to secure some degree of consistency among the thirty different translators. For this reason it was wisely decided by Watson that certain important terms should be left in the original Latin throughout, and a glossary provided. It was clearly a matter of judgment for the editor as to

gave Book 47, which includes the disputed texts, to Thomas to translate. The reviewer turned at once to Book 47 to see whether *contrectatio* was translated as 'handling', in accordance with the views of Watson, or as 'interference', in accordance with those of Thomas. In fact 'interference' is used as far as 47.2.21.pr, after which 'handling' or some synonym thereof, is used throughout. There is an interesting piece of literary detective work here for anyone who cares to pursue it. As we know, Thomas died in 1981. Had he reached 47.2.21.pr at this point, and did Watson himself take over from then on? Or did Thomas decide to defy Watson at first and then have second thoughts?

⁴ A website of errors and amendments is being compiled by Ernest Metzger of the University of Aberdeen at www.abdn.ac.uk/~law113/rl/dig/dg_main.htm

⁵ In the original edition this information was given on the left hand page with the Latin text. But this has now gone, and we are left only with what were originally the right hand pages, which contained the translation. This gives the running heads a somewhat lopsided appearance. Similarly, the amount of translation on any given page in the original edition depended on a number of factors, including the length of the *apparatus criticus* appended to the relevant page of the Mommsen text. This explains why some pages of translation in the present edition are only half filled, while others have to carry sixty or more lines in minute print.

what words to put in the glossary, which could have been of inordinate length, and in the end some 160 terms were included. Even so, there are some terms translated in the text which one wonders might not have better been left in the original Latin, such as *plebiscitum*, *edictum perpetuum*, *actio redhibitoria*, *legis actio*, *injuria* (in the sense of the delict of that name), *dolus*, *culpa*, *metus*, *actio ad exhibendum*, *mora*, *commodatum*, *contractatio* and many others of which a translation is either liable to be inexact or to beg too many questions. Moreover, the translations provided sometimes differ widely from one translator to another and even within the work of a single translator.⁶ Some of the translations given, such as 'tutelages and cares' (page xlix), 'contumelies' (throughout 47.10) and 'day works' (12.6.26.12) have a rather antique look to them; some, such as the 'Three Men of the Mint', the 'Capital Three Men' (both 1.2.2.30), and the 'Five Men for Below the Tiber' (1.2.2.31) have a slightly comic air - perhaps one has to blame Jerome K. Jerome for this; others, like 'prestations' (29.7.19), 'forestallers and regraters' (47.11.6) and 'trans-human shepherds' (50.13.2) are simply obscure. As well as this, there are innumerable Latin terms left untranslated in the Glossary,⁷ whilst in other cases a term appears in the Glossary and is then given in translation in the text.⁸ It would of course be ridiculous to demand absolute consistency in a work of this sort, as Watson himself says in his Preface, but even so one cannot help feeling that the project, again like the original compilation, would have benefited from having had more time spent upon it.

The most disappointing feature of the work - again, a feature which it shares with Justinian's original - is the lack of any index. We are told in the preface that this was going to be an important feature of the project, the task being entrusted to Peter McIntyre, the Assistant Secretary of the University of Edinburgh. The compilation of the index had to be abandoned after McIntyre's untimely death in 1982, and it is a pity that nobody else could be found to take up the baton, for it would have been an immensely valuable addition to the work. Perhaps this could be made a feature of a later edition.

Writing of Justinian's original compilation, the great Romanist H.F. Jolowicz remarked that the three years between the constitution ordering the compilation and its actual publication have always been regarded as but a short time for so great a work.⁹ Exactly the same can be said about the present project. In Alan Watson's translation we do indeed have, in the words of the *Journal of Legal History* quoted on the back covers of each volume, a major achievement and an event of the first importance. More time spent on the project would have made the result better still. But at the end of the day we have here, as with the *Digest* itself, a major work of scholarship which nobody with a serious interest in Roman law can afford not to have on their shelves.

⁶ One example of this is *dolus*, which appears in book 47 as 'deliberate wrongfulness' (47.4.1.2), 'fraud' (47.4.1.10 and 47.20.3.1), 'deliberate' (47.9.3.7) and 'evil intent' (47.9.3.7 and 47.12.3.1). Similarly the phrase *dolus malus* appears in the same book as 'dolously' (47.4.1.19 and 47.12.3.pr), 'deliberate wrongfulness' (47.8.2.pr), 'wrongful intent' (47.8.2.18 and 47.9.3.3), 'deliberately' (47.8.4.pr and 47.12.3.1) and 'evil design' (47.12.3.pr).

⁷ There are thirteen examples of this even in the introductory material, and once we get to the main body of the text they are far too numerous to count, the title 50.16 being a particularly fruitful source.

⁸ See for instance 1.1.4, 1.7.19, 9.4.12.2, 12.1.11.2, 12.4.4, 13.1.12.2, 13.5.21.2, 38.2.15, 47.10.7.pr, 47.23, 48.2.20, 48.16.1.1, 50.12, 50.16.101.pr and 50.17.77.

⁹ *Historical Introduction to the Study of Roman Law* (1939), p 499.

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LIQUOR LICENSING LAWS OF NORTHERN IRELAND. By David
McBrien. [Dublin: Gill & Macmillan. 1997. xli and (with index) 278 pp.
Hardback £36.00]

When I received the review copy I thought of beginning my review with something like 'This book was worth writing because it has a tale to tell and that tale is about how the northern state has gone about stamping its own genius on the common inheritance of pre-Partition liquor laws.'

After reading the book I realised that was not the start I wanted. This book is largely about practitioner's law and follows the predominant black letter approach to text book writing in this area.

The comparative text which broaches the intriguing subject (ripe for a Master's or PH.D) of how both Irish jurisdictions took a shared legal inheritance on a major area of legal, social, moral and political interaction and dealt with it over eighty years has yet to be written. When it is, if it is, it is unfortunately more likely to be written by a licensing academic than a practitioner since most practitioners are indifferent to the underlying fascinations of the laws they deal with.

Interestingly this text was originally written by the author, a practitioner, as an academic thesis for an LL M in Queens University. While this might not have encouraged him to feel free to probe and analyse the origins and characteristics of the licensing laws (I have not read the thesis), the academic origins of the book may be apparent in its slightly less dense and procedural presentation and in a slightly less legal-text centred approach than is unfortunately the case with most books in this area.

The first chapter on the history of licensing up till Partition is some evidence of an academic approach with its pacy and statute lead review of pre-Partition law. However, this chapter seems somewhat out of place in a text which is otherwise largely black letter.

Having said this, it should be quickly added that, within its ambitions, this is an impressive work of research which carefully and methodically works its way through the corpus of Northern Ireland licensing laws and should find favour with its target market – other practitioners and law students. Northern licensing law is dense and technical, but is still a great distance ahead of its southern counterpart which has never felt the consolidating hand of the legislature and which remains impressive only in the demands it makes of the few initiates who really understand it.

Northern licensing law has been consolidated twice, in 1971 and 1997. It is sheer pleasure (if one can put it like that) for a Southern reader to see dealt with in plain statutory provisions issues which are largely dealt with in the South by implication, by court/professional practise or any other euphemism for court acquiescence to trade/legal insistence. The hopefully impeding reform which the Southern government might undertake can learn a lot from the Northern experience. Indeed it has already learnt from it, for example in relation to the licensing of restaurants.

As this text makes clear Northern liquor licensing law has already to some degree addressed the critical issue of who else besides pubs, hotels and

restaurants should be entitled to liquor licenses. Conference centres, places of entertainment, catering schools and other higher education institutions are now specifically permitted to obtain liquor licences.

The larger licensing question of whether adequacy and vicinity any longer deserve a place in a liquor licensing code is still open, as it is in the south, and more immediately so in the south since the Competition Authority here recently recommended in an interim study the removal of all quantitative restriction on the granting of liquor licences. Over the coming period this is likely to be the predominant issue affecting licensing reform in both jurisdictions.

Once I accepted this book for what it is – a text directed towards practitioners – I found the author's style growing on me and ended up admiring his patient, understated and methodical approach. Even if it was not the only text in its field I am sure it would hold its own for these qualities.

When the time comes for a second edition, my advice would be to relax the controls a little and allow some probing on the policy and ideology side. In the present first edition where he allows himself the freedom, the author's comment are generally measured, thoughtful and helpful.

One only wishes there were more.

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