

OUTLINES
OF
ROMAN LAW

COMPRISING
ITS HISTORICAL GROWTH AND GENERAL
PRINCIPLES

BY

WILLIAM C. MOREY, PH. D.

PROFESSOR OF HISTORY AND POLITICAL SCIENCE—FORMERLY PROFESSOR OF
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PREFACE.

THE primary object of this book is to serve as a manual for the use of students and of others who desire an elementary knowledge of the history and principles of the Roman Law. Since the founding of the "historical school" in Germany, and the new direction given to legal studies by Sir Henry S. Maine, the importance of the Roman law as a part of liberal education has been strongly emphasized in England, and has received some recognition in this country. It seems now to be a well-established fact that the history of modern systems of law and the principles of comparative jurisprudence cannot be properly understood without some knowledge of this most important branch of learning. Twelve years experience in teaching this subject has convinced me of the valuable results which it affords to the student in widening his historical horizon and in deepening his sense of the importance of law as a liberal science.

The general scope of this outline is somewhat similar to that expressed in the ordinary German title, *Geschichte und Institutionen des Römischen Rechts*. But its arrangement, both in the historical and the expository part, differs considerably from that usually followed by the German text-book writers. The departure from a plan approved by writers of such eminence may require a word or two of explanation—in addition to the general necessity of adapting a work, as far as possible, to the special needs of those for whom it is written.

Since the time of Leibnitz it has been customary in Germany to separate the *external* from the *internal* history of the Roman law. This method has, it is true, made clear the distinction between the formal sources of the law, on the one hand, and the development of the various branches of the law, on the other. If the method fails at all, it fails to give a proper synthetic view of the general historical influences which have contributed to the growth of the law as a whole. I have adhered to the division into periods adopted by Puchta ; but have added a fifth period in order to emphasize the continuity which binds together the history of the Roman law from the earliest times to the present. I have also attempted to point out in each period the organic agencies at work in Roman society, whether social or political, philosophical or religious; the mode in which these agencies acted upon the prevailing legal forms and ideas ; and the effects which they produced upon the substance of the law, as a whole, and in its more important branches. And this general line of development is traced, so far as is consistent with the limits of the work, by the aid of specific illustrations. In controverted questions regarding the origin of law, I have usually followed the safe judgment of Sir Henry S. Maine.

In describing the general principles of the Roman law, one of three modes of classification may be adopted. In the first place, we may accept the ordinary arrangement adopted by the German writers in describing the modern civil law. Again, we may re-arrange the principles of the law according to an ideal order, which we think the Romans ought to have adopted. Finally, we may adhere to the general classification with which the Romans themselves were familiar in the works of their own text-book writers. Were it not for the fact that this last method is

rarely followed, it would seem hardly necessary to claim that the spirit of the Roman law can be best understood in the form in which it is expressed in their own systematic treatises. Without assuming that this is the most scientific arrangement, I have yet followed as closely as possible, the order of the "Institutes" of Gaius and Justinian, as that which most faithfully represents the legal system of the Roman jurists. The special portions of the law are explained, however, in the light of the "Digest" and the works of modern commentators.

That this book may also serve as a guide to the further study of the Roman law, each chapter is followed by a short list of references, which is intended not to be a bibliography of the subject discussed, but to call attention to certain works in English, French, and German, and to some original authorities, in which the study of the subject may be continued. The most important of these references will also be found collected in a single list at the close of the volume.

The great extent of the subject embraced in this outline must be pleaded as an excuse for the brief and often inadequate discussion of particular topics. The purpose of the outline will, however, be accomplished if it presents to the student and to the general reader a clear and comprehensive idea of the historical and scientific significance of the Roman law, and thereby awakens an interest in its further study.

ROCHESTER, N. Y.,

October 1, 1884.

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