

III. CONCLUSION

In conclusion, this is no "modest proposal,"³⁷ nor a plea for life from the gallows. It is more like the *Apology* of Socrates.³⁸ Offering a course in Roman law is the right, logical thing to do. Refusing to offer a Roman-law course or accept it as legitimate is similar to the Athenians putting Socrates to death: a hasty, irrational act that in the end harms the students most of all. It is true that knowledge of Roman law is not required to become a practicing lawyer today, but it will produce better lawyers. The significance of Roman law "rests, as Sir Henry Maine reminded us, in 'the immensity of the ignorance to which we are condemned by ignorance of Roman Law.'"³⁹

JOHN J. HOGERTY II**

37. In the "Swiftian" sense. See Jonathan Swift, *A Modest Proposal for Preventing the Children of Ireland from Being a Burden to their Parents or Country*, in SATIRES AND PERSONAL WRITINGS OF JONATHAN SWIFT (William A. Eddy ed., 1932) (the proposal is to eat the children).

38. PLATO, *The Apology*, in THE LAST DAYS OF SOCRATES 43 (Hugh Tredemick trans., Penguin Books 1954).

39. Hessel E. Yntema, *Roman Law and its Influence on Western Civilization*, 35 CORNELL L.Q. 77, 88 (1949) (quoting SIR HENRY MAINE, VILLAGE COMMUNITIES IN THE EAST AND WEST 330, 333 (7th ed. 1913)).

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APPENDIX

ROMAN-LAW COURSE OUTLINE

I. A PROPOSED ROMAN-LAW COURSE

This section will outline and briefly describe how a Roman-law class should be taught. The description will be very brief because most Roman-law texts follow the same format.¹ Basically, the course should start out with enough history and background to define "Roman" and "Roman law" and to give some context to, and an appreciation of, the content of Justinian's legislation.² The focus should then shift to the "second life" of Roman law in Europe and Roman law's importance to civilian legal systems throughout the world today.

Next, the course should consider substantive law. The instructor should follow Professor Nicholas' book, *An Introduction to Roman Law*.³ This book has the advantage of being divided in accordance with the method conceived in Gaius' *Institutes*, the original Roman-law textbook, with nice comparisons to modern civil and common law. The book is well written and focuses on the major cultural institutions, the juristic method, and their importance to society. Particular attention should be placed on those areas in which the common law has adopted the Roman law.⁴ A proposed course outline and bibliography follow:

A. *Historical Backdrop*

1. Roman History and Society
2. Diverse Meanings of "Roman Law"
3. Procedure at Roman Law
4. Sources of Law
 - a. *Statutes, Edicts, Jurists*
 - b. *Justinian's Legislation*
5. Second Life of Roman Law
 - a. *Survival/Reception*
 - b. *Modern Codifications*

1. The format is based on the original Roman-law textbook, the *Institutes* of Gaius, dating from about 161 A.D. See BARRY NICHOLAS, *AN INTRODUCTION TO ROMAN LAW* 36 (3d ed. 1962). Gaius divided the law into three areas: Persons, Things, and Actions; a division that has survived into the modern Roman-law texts and all civil-law systems. *Id.* at 60.

2. On Justinian's legislation and its importance, see note 5 in the Essay itself.

3. See generally NICHOLAS, *supra* note 1.

4. See note 7 in the Essay itself (especially the last paragraph).

c. *Place of Roman Law Today*B. *Roman Substantive Law*1. *Gaius' Institutes Updated*a. "Persons"⁵b. "Things"⁶c. "Actions"⁷C. *Bibliography of Recommended Books*1. Required Texts

BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW (1962).

H.F. JOLOWICZ & BARRY NICHOLAS, HISTORIC INTRODUCTION TO THE STUDY OF ROMAN LAW (3d ed. 1972).

2. *Advanced Textbooks*

W.W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN (Peter Stein ed., 3d ed. 1963).

FRITZ SCHULZ, PRINCIPLES OF ROMAN LAW (Marguerite Wolff trans., 1936).

J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW (1976).

3. *Juristic Method*BRUCE FRIER, THE RISE OF THE ROMAN JURISTS: STUDIES IN CICERO'S *PRO CAECINA* (1985).

FRITZ SCHULZ, HISTORY OF ROMAN LEGAL SCIENCE (1946).

4. *Legal Periods*

FRITZ SCHULZ, CLASSICAL ROMAN LAW (1951).

ALAN WATSON, ROMAN PRIVATE LAW AROUND 200 B.C. (1971).

ALAN WATSON, LAW MAKING IN THE LATER ROMAN REPUBLIC (1974).

ALAN WATSON, ROME OF THE XII TABLES: PERSONS AND PROPERTY (1975).

5. *Relation to Common Law*

W.W. BUCKLAND & ARNOLD D. MCNAIR, ROMAN LAW & COMMON LAW: A COMPARISON IN OUTLINE (F.H. Lawson ed., 2d ed. 1952).

6. *Relation to the Present*

CHARLES PHINEAS SHERMAN, ROMAN LAW IN THE MODERN WORLD (1917).

REINHARD ZIMMERMANN, THE LAW OF OBLIGATIONS: ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION (1990).

7. *Primary Sources*

INSTITUTES OF GAIUS (Peter Gordon ed., W.M. O.F. Robinson trans., 1988)

INSTITUTES OF JUSTINIAN (Peter Birks & Grant McCleod trans., 1987)

DIGEST OF JUSTINIAN (Theodor Mommsen & Paul Krueger eds., Alan Watson trans., 1985).

8. *General Reference*

W.A. HUNTER, A SYSTEMATIC AND HISTORICAL EXPOSITION OF ROMAN LAW: IN THE ORDER OF A CODE (J. Ashton Cross trans., 4th ed. 1903).

SIR JOHN EDWIN SANDYS, A COMPANION TO LATIN STUDIES (3d ed. 1929).

5. This section would describe the family and its function in Roman society and beyond. Topics would include *patria potestas* and the ideas of marriage, legitimation, guardianship, and divorce, which have heavily influenced the common law. See NICHOLAS, *supra* note 1, at 60-97.

6. This section would center on property law, which is an excellent stage for comparing civil and common law. The idea of absolute ownership, the distinction between ownership and possession, the modes of acquiring possession, and rights in others' property (servitudes/easements) should all be discussed. See *id.* at 98-157.

7. This section would focus on obligations (contracts), delict (torts), and successions (trusts and estates). Each of these three areas provides topics that fit our objectives such as: the relationship between *societas* and partnership, *negotiorum gestio*, unjust enrichment, and the possible connection between *fideicommissa* and trusts. See *id.* at 158-270.