curatorship, and emancipation;[181] things and estates;[182] and usufruct, use and habitation[183]), most of which also appear in different incarnations in the present Civil Code. Louisiana's claim to take directly from the Roman legacy is a good one.

I would be in bad faith, and indeed knavish (to use the 1808 translation of "*mauvaise foi*"), if I were to assert that Louisiana's case is certain. Although it is styled a "brief," this Article is of course an exercise in historical research. Overstatement is a mistake in historical work, which is always uncertain. Part of the controversy over the sources of the 1808 Code[184] is rooted in the inherent problems of historical research. There can be no guarantee that the past, be it the couple of hundred years of Louisiana legal history or the several thousand years of Roman legal history, will be understood with perfect accuracy. All that honest historical work can offer is honesty, and one might hope for some intelligence. In short, responsible history can only make an honest case.

This Article makes the case that the Louisiana law of possession for the most part follows the Roman law. The Article further emphasizes that the redactors did not depend only on later sources, such as the *Siete Partidas* or French commentators, for their knowledge and use of the Roman law. The nearly verbatim reproduction of Roman provisions in the Code of 1808 shows this, particularly when compared with the variance of the *Siete Partidas* and other possible intermediate sources. The case is further strengthened because the early Louisiana law also followed general Roman methodology and doctrine. Louisiana need not take through Spain or France, at least insofar as the possession articles are concerned. For the foregoing reasons, Louisiana should be recognized as a direct successor to the Roman legacy.

181. *See id.* at 55.
182. *See id.* at 62-63.
183. *See id.* at 65.
184. *See supra* note 3 and accompanying text.

COMMENTS

REFLECTIONS AT THE CLOSE OF THREE YEARS OF LAW SCHOOL: A STUDENT'S PERSPECTIVE ON THE VALUE AND IMPORTANCE OF TEACHING ROMAN LAW IN MODERN AMERICAN LAW SCHOOLS*

I. INTRODUCTION

Several years ago, the distinguished legal scholar Francis de Zulueta stated that as students, professors, or practitioners of the law we are all—civilians and commoners alike—the "*heredes*

* The theme of this Essay is not a new one. It is a theme that was commonly put forward in the past and, in fact, appeared in the very first issue of the *Tulane Law Review*. *See* Charles S. Lobingier, *The Value and Place of Roman Law in the Technical Curriculum*, 1 So. L. Q. (TUL. L. REV.) 117 (1916). It has been, however, some time since the trumpet has been heralded, and perhaps today—appealing to a new audience in a rapidly changing, shrinking world—the call may be heeded.

At the outset I should mention two things. First, I have no "civilian" bias. I have followed the common-law curriculum at Tulane, and I am from a midwestern, common-law state to which I will return to practice. Second, I am indebted to previous articles on this subject for many of the arguments and observations herein. *See e.g.*, P.R. Coleman-Norton, *Why Study Roman Law?*, 2 J. LEGAL EDUC. 473 (1950); F.H. Newark, *The Future of Roman Law in Legal Education in the United Kingdom*, 33 TUL. L. REV. 647 (1959); Charles P. Sherman, *The Value of Roman Law to the American Lawyer of Today*, 60 U. PA. L. REV. 194 (1911).

necessarii" of Roman law.[1] *Heres necessarius* had a very specific meaning at Roman Law: If a testator had no heirs, he could leave his estate to one of his slaves who then became free and stepped into the shoes of the master. The slave could not reject his inheritance, even if he wanted to.[2] This appointment could occur even where the testator was bankrupt, in which case it was called *hereditas damnosa*.[3] If the bankrupt testator had no heirs, he could designate one of his slaves as heir, who would then be saddled with the obligations of his master at the master's death. This appointment satisfied the Roman belief that there had to be universal succession.[4]

Professor de Zulueta's sentiment is clear: Like it or not we are stuck with our Roman-law inheritance. The influence of Roman law on the civil law has never seriously been doubted.[5] Recent scholarship has turned up similar evidence with respect

1. F. de Zulueta, *The Science of Law*, *in* THE LEGACY OF ROME 173, 173 (Cyril Bailey ed., 1923).

2. *Encyclopedic Dictionary of Roman Law*, 43 TRANSACTIONS OF THE AMERICAN PHILOSOPHICAL SOCIETY 333, 487 (1953).

3. *Id.* at 485.

4. BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW 235-39 (3d ed. 1962).

5. Roman law developed over roughly one thousand years (510 B.C.-530 A.D.) in a basically uncodified form. *See id.* at 2-14, 39-42. In this respect, it developed in much the same way as the common law. In 533 A.D., the Emperor Justinian promulgated his famous legislation, the *Corpus Juris Civilis*, which codified pre-existing Roman law. *Id.* at 39-42. The *Corpus Juris* consisted of four parts: the Digest, a compilation of the opinions of the Roman jurists; the Code, a compilation of imperial decrees; the Novels, Justinian's own decrees; and the Institutes, a basic text book for law students. *See id.*

Justinian's legislation survived in a few areas in various attenuated forms, but basically lay dormant until it was rediscovered in Bologna, Italy around the year 1100. *Id.* at 45-46. Thus began the "second life" of Roman law, culminating in its "reception" as the idyllic law throughout Europe. *See id.* at 47-50. During the "Age of Exploration," the great European powers imposed their law, based on Roman Law, as well as their languages and customs upon the peoples they came into contact with in their colonies throughout the world. In the late 1700s and throughout the 1800s, a movement for codification erupted along nationalist lines in Europe. *See id.* at 51-52. This movement resulted in many of the civil codes now in effect in the modern European countries, including the French *Code civil*, which basically follow the Roman format but include some local customary law. *Id.* Many of the civil codes subsequently enacted in countries around the world have been based on these European national codes, and thus they have been touched by the influence of Roman law as well. *Id.*

Based on the foregoing, scholars have noted that Roman law is the basis for the laws of all of Continental Europe, and, through secondary sources, the laws of North and South Africa, Japan, Turkey, the countries forming Central and South America, the former Soviet Union and Eastern block, and numerous others. *See* NICHOLAS, *supra* note 4 at 45-54; P.R. Coleman-Norton, *Why Study Roman Law?*, 2 J. LEGAL EDUC. 473, 475 & n.6 (1950); Ernst Rabel, *Private Laws of Western Civilization*, 10 LA. L. REV. 1, 1 (1949).

to the common law.[6] Roman law seems to have contributed to the development of the common law during both its formative period in England and its maturation in the United States.[7] "It is this peculiar ability of the Roman law of living in symbiosis (union) with diverse legal organisms that has promoted its functioning as the medium of legal science."[8]

Since we have no choice as to our inheritance, and cannot escape its influence, we should not seek to ignore its present value and importance. A course in Roman law offers enormous benefits to civil- and common-law students alike. As civil-law students have traditionally been required to study Roman law, we will not focus on them here. This Essay will outline the value of a Roman-law course to common-law students, who are rarely even given the opportunity to study Roman law.[9] I will then propose how such a course should be taught.

At the outset it must be admitted that Roman law is not a prerequisite for finding a good job or for succeeding in legal practice for either common- or civil-law students. It is also true, however, that "[t]o conceive of the value of knowledge as based upon its utility for the acquisition of wealth or material success is to completely overlook the chief purpose in all education—namely, the development of character as well as intellect."[10]

6. See, for example, the articles appearing in this symposium by Professors Helmholz, Herman, and Dean Hoeflich.

7. On the influence of Roman law on the common law in England, see generally R.H. HELMHOLZ, ROMAN CANON LAW IN REFORMATION ENGLAND (1990); Charles Donahue, Jr., *Roman Canon Law in the Medieval English Church: Stubbs v. Maitland Re-Examined After 75 Years in the Light of Some Records from the Church Courts*, 72 MICH. L. REV. 647 (1974); R.H. Helmholz, *Legitim in English Legal History*, 1984 U. ILL. L. REV. 659; R.H. Helmholz, *The Roman Law of Guardianship in England 1300-1600*, 52 TUL. L. REV. 223 (1978). On the influence of Roman law on the common law in the United States, see generally Dean Hoeflich's article appearing in this Symposium, as well as his earlier works cited therein at note 4. *See also* Mitchell Franklin, *Concerning the Influence of Roman Law on the Formulation of the Constitution of the United States*, 38 TUL. L. REV. 621 (1964); Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403 (1966).

As early as 1950, one scholar noted: "[T]here is more of Roman law [in American common law] than the ordinary American lawyer realizes, for most of the basic principles in our law of admiralty, wills, successions, obligations, easements, liens, mortgages, adverse possession, corporations, judgments, and evidence come from either the survival or the revival of Roman law in English law." Coleman-Norton, *supra* note 5, at 476.

8. Rabel, *supra* note 5, at 7.

9. A survey conducted by the Author found only seven American law schools that offer a course in Roman law: Boalt Hall, U.C. Berkeley; the University of Chicago; Harvard; the University of Michigan; Syracuse; Tulane; and the University of Virginia.

10. Charles P. Sherman, *The Value of Roman Law to the American Lawyer of Today*, 60 U. PA. L. REV. 194, 196 (1911).

II. The Value of Roman Law to American Law Students[11]

A. *Intellectual Value*

Roman law's greatest benefit to the student is its intellectual vigor. From Roman times to the present, the study of Roman law has attracted some of the world's greatest minds. The reasons for this eminence seem to stem from the Roman juristic method and the Roman method of legal expression.

1. The Juristic Method

As one scholar has noted, "[i]t long has been admitted on all sides that the Romans had a genius for law and that their development of legal principles in government constitutes their chief historic significance for all time."[12] The Romans excelled at the study of law because it fit the Roman national psyche. Above all things, the Romans valued continuity, reason, and order. Jurisprudence—divining legal rules through reason and applying them in an orderly fashion to practical facts—flowed naturally, therefore, from the Romans' ordered culture.

In addition, the Roman jurists' adeptness at defining the proper level of abstraction for legal rules, balancing the general and the specific, has given Roman law its longevity. The Roman jurists developed legal rules that have been broad enough to be applied in extremely different cultures over the last 2,000 years, and yet the rules have been specific enough to adequately settle disputes between two parties. As one of the greatest Roman historians noted, the Romans "satisfied . . . two conflicting requirements, that law shall constantly be fixed, and that it shall constantly be in accordance with the spirit of the age."[13] This excellent balance explains why Roman law was seen as *ratio scripta* (written reason) by writers in the late Middle Ages[14] and similarly as a "great fountain of rational jurisprudence" by a nineteenth-century United States Supreme Court Justice.[15]

11. The organization of this section will roughly follow the *schema* set out in Professor Sherman's article, see generally *id.*

12. Coleman-Norton, *supra* note 5, at 477.

13. 1 Theodor Mommsen, The History of Rome 30 n.2 (W.P. Dickenson trans., 2d ed. 1868).

14. *See* Hans J. Wolff, Roman Law: An Historic Introduction 183, 207 (1951). For more on Roman law during this period, see generally Paul Vinogradoff, Roman Law in Mediaeval Europe (1909).

15. Joseph Story, *Growth of the Commercial Law, in* The Miscellaneous Writings of Joseph Story 262, 271 (William W. Story ed., 1852) (discussing how the common law has borrowed from the civil law, particularly in the area of contract).

Defining the proper level of abstraction gives Roman law its "unique significance as a common source of legal conceptions."[16]

The benefits students gain from learning the Roman juristic method, therefore, are twofold. First, it teaches them to spot and phrase issues with the proper level of abstraction. This technique may be one of the most difficult for a beginning law student to learn, and Roman-law study is an excellent way to get the lesson across. Second, studying the Roman juristic method will give students a sense of reassurance: "[I]t will often flash upon the student that the problems of today are not, as they seemed, new problems which must be tackled solely on the basis of *a priori* reasoning. They have happened before and we know what the Romans managed to make of them."[17]

2. The Method of Expression

" 'Law,' as Sir Henry Maine says, 'is the chief branch of Latin literature . . . one part which has profoundly influenced modern thought.' "[18] Although most "forms of Latin literature were borrowed either directly or indirectly from the Greeks . . . jurisprudence was a purely native plant in the homely soil of Latium."[19]

Proper legal expression is the hallmark of great lawyers, and the Romans were masters at committing legal ideas to writing. "The style of the Roman jurists is simple, clear, brief, terse, nervous and precise . . . far superior to the Anglo-American, and worthy of imitation . . . ."[20] For the student who can read Latin, these virtues will be readily apparent. Even those not versed in Latin, however, will have access to the style of the Roman legal literature. Because of the great scholars that have lent themselves to the study of Roman law, the English translations, commentaries, and textbooks carry forward the same excellent form of expression perfected by the Romans.[21]

16. Hessel E. Yntema, *Roman Law as the Basis of Comparative Law, in* 2 Law, A Century of Progress 346, 347 (1937).

17. F.H. Newark, *The Future of Roman Law in Legal Education in the United Kingdom*, 33 Tul. L. Rev. 647, 658 (1958).

18. Sherman, *supra* note 10, at 198 (citations omitted).

19. Coleman-Norton, *supra* note 5, at 477.

20. Sherman, *supra* note 10, at 198.

21. A few of the many excellent Roman-law scholars who wrote for English-speaking audiences include: W.W. Buckland, F. de Zulueta, F.H. Lawson, H.F. Jolowicz, and, although it is not common practice to include living scholars among the "greats," Profes-

B. *Ethical Value*

The ethical value of Roman law may be doubted today. After all, Roman society contained many institutions that we now find repugnant: slavery, gladiators, mass executions, misogyny, and general excess. If, however, we can avoid sensationalizing history, judge the Romans in the context of their time, and look at the function of law in that society, there are ethical lessons to be learned.

First, Roman society actually was imbued with a heightened sense of morality, found in the stoic philosophy.[22] Second, the function of law in society was to effect justice, similar to the English courts of equity. Ulpian, an early third-century jurist, described law and the legal profession as follows:

> When a man means to give his attention to law (*jus*), he ought first to know whence the term *jus* is derived. Now *jus* is so called from *justitia* [justice]; in fact . . . *jus* is the art of what is good and fair. Of this art we may deservedly be called the priests; we cherish justice and profess the knowledge of what is good and fair, we separate what is fair from what is unfair, we discriminate between what is allowed and what is forbidden, we desire to make men good, not only by putting them in fear of penalties, but also by appealing to them through rewards, proceeding, if I am not mistaken, on a real and not a pretended philosophy.[23]

C. *Historical Value*

Just as a course in Western Civilization is required to obtain an undergraduate degree in almost any subject (business, science, literature, mathematics, etc.) at almost any college, so too should Roman law be required to obtain a law degree.[24] The

sors Barry Nicholas and Peter Stein (whose articles appear in the present issue of this law review) surely should be mentioned in this company.

22. On the ethical code of the Stoics, see E. VERNON ARNOLD, ROMAN STOICISM 330-56 (Routledge & Kegan Paul Ltd. 1958) (1911); Maxwell Staniforth, *Introduction* to MARCUS AURELIUS, MEDITATIONS 9-18 (Maxwell Staniforth trans., Penguin Books, 1964). For a "real life" application of the Stoic philosophy, a reading of the *Meditations* is unmatched.

23. DIG. 1.1.1.1. (footnote omitted).

24. The Author is well aware of the debate raging over "multicultural curriculum reform" and "political correctness." The same radical "multiculturalists" who oppose the teaching of western civilization and the classics would probably oppose the teaching of Roman law. Persons with balanced perspectives (i.e., those who attack both extremes and believe that the core curriculum should be reformed, but not through scrapping everything "classic"—the Author's position) will hopefully see the logic in offering a course in Roman law. The issue is too complex and important to be discussed in this short Essay. For further discussion, see generally Robert Hughes, *The Fraying of America*, TIME, Feb. 3, 1992, at 44, and Ronald J. Rychlak, *Civil Rights, Confederate Flags, and Political Correctness: Free Speech and Race Relations on Campus*, 66 TUL. L. REV. 1411 (1992), and authorities cited therein, especially notes 51-60.

reason is similar;[25] it is necessary to know from whence you came to know where you are. The background knowledge that these courses provide allows the student to see influences and understand references in later, or even present, times. The English literature student could hardly understand Milton or Shakespeare without the basic knowledge of the Greeks and Romans offered in the introductory western civilization course. The political science student studying the drafters of the American Constitution could not truly understand the "founding fathers' " mindset without some knowledge of Roman history and the Greek and Roman political theorists who so heavily influenced the Constitutional Convention.[26] A course in Roman law offers

25. A study of English history or the English common law rarely mentions the period before the Norman Conquest. A course in Western Civilization—and likewise Roman law—explains how our shared western culture evolved up to the Conquest. Skipping the course in Western Civilization or Roman law is like skipping the first 200 pages of a 300 page mystery novel: the ending may be great, and you may be able to guess what was in the first 200 pages, but you undoubtedly missed some important characters, scenes, and clues that would have given you a deeper understanding and appreciation of the novel.

26. References to Roman history were widespread in the period leading up to the American Revolution, and the Revolutionary leaders were greatly influenced by classical parallels. *See, e.g.*, BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 25 (1967) ("What gripped their [American Revolutionary leaders] minds, what they knew in detail, and what formed their view of the whole of the ancient world was the political history of Rome . . . they had at hand, and needed only, Plutarch, Livy, and above all Cicero, Sallust, and Tacitus . . . ."); Charles F. Mullett, *Classical Influences on the American Revolution*, 35 CLASSICAL J. 92, 94 (1939) ("[I]t was an obscure pamphleteer indeed who could not muster at least one classical analogy or one ancient precept.").

Citations to Roman history likewise peppered the debates at the Constitutional Convention: "John Dickinson, Pierce Butler, Benjamin Franklin, George Mason, James Madison, James Wilson, Alexander Hamilton, and Charles Pinckney delivered to their colleagues mini lectures and lectures that sometimes lasted for several hours on the lessons to be drawn from ancient or modern history." FORREST MCDONALD, NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION 5 (1985). One exchange between James Madison and John Dickinson on the issue of how many members the Senate should have revolved entirely around the experience of the Roman Tribunes. *Id.* at 231.

It should therefore come as no surprise that in the published debates following the Convention between the Federalists and anti-Federalists over whether to adopt the new Constitution, the pseudonyms adopted by both sides were those of Roman figures:

> [T]wo anti-Federalists used the pseudonym Cato; one used Cato Uticensis . . . ; two Brutus; one Brutus, Jr.; and one, Cassius. All of these were thereby identifying themselves with defenders of the late Roman republic . . . . Another used the name Aggripa, after the Greek skeptic, and another, Cincinnatus. Still another used a Latinism—Vox Populi (voice of the people)—to identify his cause with the

the modern American common-law student similar benefits.

The lessons of history are learned by locating the origins of the institutions that are fundamental to society and seeing how and by what methods they have been changed over time. In Roman history we find the origin of most of our institutions. In Roman law we find the force that shaped those institutions during Roman times and throughout the history of western civilization to the present.[27] Thus it has been stated that "the value of the study of Roman law lies not in becoming acquainted with the detailed rules . . . but in a consideration of those important institutions, such as marriage, property, and contract."[28]

D. Comparative Value

The comparative value is perhaps the most "practical" value Roman law offers to the common-law student—a way in which Roman law is applicable to modern legal practice. Commentators have identified three purposes for comparative-law study: professional, cultural, and scientific.[29] As the world rapidly shrinks in size due to advances in technology, the importance of comparative law in general, and each of these purposes in particular, grows at an equally rapid pace. The study of Roman law is an excellent introduction to the study of comparative law and fosters each of the three comparative-law purposes.[30]

The professional purpose of comparative law is defined as helping judges, lawyers, or legislators in one jurisdiction understand the law in another jurisdiction.[31] Roman law facilitates this purpose for common-law students by introducing them to the principles and history behind civil-law systems. This is not to suggest that if students are versed in Roman law, they are competent in every (or any) civil-law system. In fact, we must be very careful to avoid overstatements of this type.[32] A study of Roman law can, however, serve as an introduction, as a "key which unlocks the legal systems of modern continental Europe."[33]

The cultural purpose of comparative law seeks "to widen the perspectives of the students and to make it possible for them to better appreciate and function within their own legal system."[34] Roman law can advance this purpose for both civil- and common-law students. For civil-law students, it serves as a background and history from which to judge their present system. For common-law students, it can serve as an introduction to the civil law, the world's other great legal system. The importance of this added cultural perspective cannot be emphasized enough, even if the student never practices outside of the common law.

Finally, the scientific purpose of comparative-law study is to compare the rules of two legal systems looking for what is best in each with an eye toward harmonization or unification.[35] Roman law can help with this endeavor, as it has in the past, by serving as a neutral third choice between the modern civil law and the modern common law.[36]

The four "values" that Roman law offers to the modern common-law student mentioned in this Essay—Intellectual, Ethical, Historical, and Comparative—do not comprise an exhaustive list. Additional arguments could be made, but hopefully enough has been said to convey the importance of Roman law to today's law student. A description of how such a course should be taught and a short bibliography may be found in the appendix following this Essay.

common man . . . . By contrast, Hamilton, Madison, and Jay signed the *Federalist Essays* Publius, after the Roman who, following Lucius Brutus's overthrow of the last king of Rome, established "the republican foundation of the government."

Id. at 68. Professor McDonald notes that "they could assume that their readers would understand something of their message from their choice of pen name." *Id.*

27. *See generally* PETER STEIN, LEGAL EVOLUTION: THE STORY OF AN IDEA (1980) (discussing the place of Roman law in the "evolution" of legal theory); ALAN WATSON, ROMAN LAW AND COMPARATIVE LAW (1991) (discussing the relationship between Roman law and later legal systems and institutions); REINHARD ZIMMERMAN, THE LAW OF OBLIGATIONS: ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION (1990) (discussing the influence of Roman law on modern legal concepts).

28. Newark, *supra* note 17, at 651.

29. MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL 3 (1982).

30. *See* Peter Stein, *Law After 1992*, 111 CAMBRIDGE REV. 101, 103-04 (1990). *See generally* WATSON, *supra* note 27 (arguing that a study of Roman law is needed to understand the commonality of legal systems); Yntema, *supra* note 16 (discussing the significance of Roman law to comparative law).

31. GLENDON ET AL., *supra* note 29, at 3.

32. *See generally* Shael Herman, *The Uses and Abuses of Roman Law Texts*, 29 AM. J. COMP. L. 671 (1981) (arguing that authors should be careful not to assume that knowing Roman Law means that they are competent in modern civil law).

33. Sherman, *supra* note 10, at 201.

34. GLENDON ET AL., *supra* note 29, at 3.

35. *Id.*

36. *See generally* STEIN, *supra* note 27, at 122-27 (discussing the influence of Roman law on legal conceptions).

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)).

** The Author would like to thank Lawrence Okamura, Professor of Ancient History, University of Missouri—Columbia, for sparking his interest in Roman history, and his wife, Morgan, for her excellent editing of this and other works and for her undying love and encouragement in all things.

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"*[5]
   b. *"Things"*[6]
   c. *"Actions"*[7]

C. *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).

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.

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

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