

**Oswaldo Cavallar & Julius Kirshner, *Jurists and Jurisprudence in Medieval Italy. Texts and Contexts*, Toronto-Buffalo-London: University of Toronto Press, 2020, XXV + 866 pp. [ISBN: 978-1-4875-0748-0]**

The present volume came into being for didactical reasons i.e. out of the need for primary source materials to teach upper-level courses dealing with mediaeval learned law and the *ius commune*. It gradually developed within the context of teaching history at Anglo-American academic institutions. In the introduction, the authors point out two obstacles which they faced. First, primary source materials in their original shape are not easily accessible. Although some early-modern or later editions may be available, there are hardly any translations. Secondly, literature on mediaeval learned law, written from the nineteenth century onwards, is likewise difficult to access. It was written by experts for experts, expecting knowledge of Latin and medieval Roman and canon law from the reader, including technical legal terminology. Moreover, a major part of this secondary literature was written in languages like German, French and Italian, which American history students rarely master.

The problem is clear, but at the same time we should realise that annotated translations of primary source materials of the *ius commune*, as recorded in the present volume, only solve part of the problem. They do make it easier to teach a course on certain subjects, but they cannot enable us to make advanced students familiar with the vital skills required for investigating on an academic level this field of legal history. The latter would still require prior knowledge of Latin, palaeography, medieval Roman law and Canon law and some modern languages.

Already in the eighties, Julius Kirshner started producing English translations of primary *ius commune* texts in order to introduce history students into the way of thinking of the mediaeval learned jurists and their use of the sources. These translations were meant for internal use at the University of Chicago. After having tested them for many years and specifically after having gained experience in using translations of texts by Bartolus, the idea emerged to extend the existing body of translations into a more encompassing collection, which could be used by other lecturers as well. This work was achieved in association with Oswaldo Cavallar. In such a way the present anthology was created, which aims at making primary *ius commune* texts accessible to a non-specialist readership.

In point of fact, a collection like this cannot cover all areas of medieval learned law. Hence, a limited number of fields of law were selected and dealt with in the six sections of the book i.e. (i) professors and students, (ii) legal profession, (iii) civil and criminal procedure, (iv) crime, (v) personal and civic status, and (vi) family matters. Within these sections there are subdivisions into consecutively numbered chapters, each of them covering a distinct subject. Every chapter contains translations of *ius commune* texts, dealing with the specific subject, preceded by an explanatory introduction and a concise bibliography. The original Latin texts are not reproduced together with the translation. Some pivotal Latin notions, however, are added in brackets. References to texts in the *Corpora iuris (allegationes)* are generally recorded in the footnotes in accordance with present-day quotation. They are recorded in the main text only if they appeared to be especially relevant. The system of citing the sources of Roman and Canon law in mediaeval legal works is explained at the end of the volume.

The authors have rendered an enormous service to academic teaching by making their collection, originally indented for internal use, generally accessible. There is no comparable anthology. This makes the volume an important and invaluable asset to legal historical teaching. As always, some choices may be questioned. Not reproducing the Latin may prevent students who do master this language, from comparing the original Latin text with the English translation. To remove the option of comparison, has certain disadvantages. After all, every translation remains a kind of interpretation, susceptible to debate, and in upper-level classes this debate should surely be encouraged. It is precisely from this tier that the next generations of scholars must be recruited: capable of taking over the baton. Similarly, references to the *Corpora iuris (allegationes)* are an organic part of the main text. They may considerably determine its reasoning. Fortunately, English translations are extant of all parts of the *Corpus iuris civilis* and students can find out whether the references are especially relevant. Moreover, they can discover many other things, such as the crucial element of the text referred to, at least from the perspective of the jurist referring to it, and how this element was adopted as part of the reasoning. The references provide opportunity *par excellence* to let students explore what the mediaeval author is doing and to become aware of the methodology applied in mediaeval legal scholarship.

As stated above, a collection like this cannot be all embracing. Although the authors refer to the fact that the *ius commune* lives on in many present-day jurisdictions, it is striking that one of the fields of law which is capable of showing this convincingly and possibly better than other fields of law, is heavily underrepresented, viz. substantive patrimonial law, i.e. property, delict and contract. As a consequence, we do not find much about the formation of legal dogmatics of private law, which frequently took place step by step, starting with the pre-Accursian disputes between mainstream and dissenting jurists and often influenced by the innovative thoughts of the jurists from the School of Orleans. This very development of academic, doctrinal thinking, resulting in concepts and basic rules we still employ today, is indispensable for the teaching of *ius commune* in continental Europe, where legal history is generally taught in Law Schools and not in Faculties of Art. However, it would not be fair to consider the authors' choices a shortcoming when selecting certain themes for their translations. Their pioneering and meticulous work deserves our recognition and inspire us to compile additional collections of translations.

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