

READINGS IN ROMAN LAW

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Readings in Roman Law by Roscoe Pound

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ROSCOE POUND

**READINGS
IN ROMAN LAW**

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COMPILED BY

ROSCOE POUND

PROFESSOR OF LAW IN THE UNIVERSITY OF NEBRASKA

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NOTE.

The references to works in English accessible to students are made thus:

SOHM—Söhm's Institutes of Roman Law, translated by Ledlie (2d ed., 1901).

MUIRHEAD—Muirhead, Historical Introduction to the Private Law of Rome (2d ed., 1899).

ROBY—Roby, Roman Private Law in the Times of Cicero and of the Antonines.

POSTE—Poste, Gaii Institutionum Iuris Ciuilis Commentarii Quatuor, with a translation and commentary (3d ed., 1890).

MOYLE—Moyle, Imperatoris Iustiniani Institutionum Libri Quatuor, with introductions, commentary, and excursus (2d ed., 1890).

In the translations, I have used Krüger's edition of the Institutes and Mommsen's edition of the Digest (1895), Krüger's edition of the Code (1895), Krüger and Studemund's Gaius (1891), and the sixth edition of Bruns, *Fontes Iuris Romani Antiqui* (1893). Also, Dernburg, *Pandekten*, 5th ed., 1896; Winscheid, *Lehrbuch des Pandektenrechts*, 3d ed., 1870; Baron, *Pandekten*, 9th ed., 1896; Salkowski, *Institutionen*, 7th ed., 1898.

The translations from the Institutes have been revised by comparison with Moyle and Abdy and Walker, and those from Gaius by comparison with Poste and Abdy and Walker. Translations from the Digest have been revised by comparison with Monro, so far as his translation goes.



There is no system of law in which principles are investigated with more good sense, or declared and enforced with more accurate and impartial justice,

Kent, Commentaries, I, 547.

Turning from the study of the English to the study of the Roman law, you escape from the empire of chaos and darkness, to a world that seems by comparison, the region of order and light.

Austin, Jurisprudence (3d ed.), 60.

Es ist eine wahre und jetzt weit verbreitete Einsicht dasz das römische Recht zuerst und vorzugsweise in der Weltgeschichte den Gedanken des Rechts realisiert hat.

Stahl, Philosophie des Rechts, I, sec. 96.

Drei Mal hat Rom der Welt Gesetze dictirt, drei Mal die Völker zur Einheit gebunden, das erste Mal als das Römische Volk noch in der Fülle seiner Kraft stand, zur Einheit des Staats, das zweite Mal, nachdem dasselbe bereits untergegangen, zur Einheit der Kirche, das dritte Mal in Folge der Reception des Römischen Rechts im Mittelalter zur Einheit des Rechts; das erste Mal mit äuserm Zwange durch die Macht der Waffen, die beiden andern Male durch die Macht des Geistes. Die welthistorische Bedeutung und Mission Roms in Ein Wort zusammengefasst ist die Ueberwindung des Nationalitätsprincips durch den Gedanken der Universalität.

Ihering, Geist des Römischen Rechts, I, 1.

The following table shows the results of the experiment. The first column is the number of trials, the second column is the number of correct responses, and the third column is the percentage of correct responses. The data shows that the percentage of correct responses increases with the number of trials, indicating that the subject is learning the task.

Number of Trials	Number of Correct Responses	Percentage of Correct Responses
1	0	0%
2	1	50%
3	2	66.67%
4	3	75%
5	4	80%
6	5	83.33%
7	6	85.71%
8	7	87.5%
9	8	88.89%
10	9	90%
11	10	90.91%
12	11	91.67%
13	12	92.31%
14	13	92.86%
15	14	93.33%
16	15	93.75%
17	16	94.12%
18	17	94.44%
19	18	94.74%
20	19	95%
21	20	95.24%
22	21	95.45%
23	22	95.65%
24	23	95.83%
25	24	96%
26	25	96.15%
27	26	96.3%
28	27	96.43%
29	28	96.55%
30	29	96.67%
31	30	96.77%
32	31	96.88%
33	32	96.97%
34	33	97.06%
35	34	97.14%
36	35	97.22%
37	36	97.3%
38	37	97.37%
39	38	97.44%
40	39	97.5%
41	40	97.56%
42	41	97.62%
43	42	97.67%
44	43	97.73%
45	44	97.78%
46	45	97.83%
47	46	97.87%
48	47	97.92%
49	48	97.96%
50	49	98%
51	50	98.04%
52	51	98.08%
53	52	98.11%
54	53	98.15%
55	54	98.18%
56	55	98.21%
57	56	98.25%
58	57	98.28%
59	58	98.31%
60	59	98.33%
61	60	98.36%
62	61	98.39%
63	62	98.41%
64	63	98.44%
65	64	98.46%
66	65	98.48%
67	66	98.51%
68	67	98.53%
69	68	98.55%
70	69	98.57%
71	70	98.59%
72	71	98.61%
73	72	98.63%
74	73	98.65%
75	74	98.67%
76	75	98.68%
77	76	98.7%
78	77	98.72%
79	78	98.74%
80	79	98.75%
81	80	98.77%
82	81	98.79%
83	82	98.8%
84	83	98.81%
85	84	98.82%
86	85	98.84%
87	86	98.85%
88	87	98.87%
89	88	98.89%
90	89	98.9%
91	90	98.91%
92	91	98.92%
93	92	98.93%
94	93	98.94%
95	94	98.95%
96	95	98.96%
97	96	98.97%
98	97	98.98%
99	98	98.99%
100	99	99%

I.

SOURCES AND FORMS OF THE LAW.

Roby, I, 5-16; Sohm, secs. 11-20.

SEC. 1. Sources.

INSTITUTES, I, 1 and 2 pr. and secs. 1-3.

Tit. 1. Justice is the set and constant purpose which gives to every man his due. 1. Jurisprudence is the knowledge of things divine and human, the science of the just and of the unjust. . . . 3. The precepts of the law are these: to live honorably, not to injure another, and to give to each his due. 4. Of this study there are two branches, public and private. Public law is that which relates to the constitution of the Roman state; private law that which relates to the advantage of individuals. We have to speak, then, of private law, which is threefold (in origin). For it is gathered from precepts of nature, or of the law of nations, or of the civil law.

Tit. 2. Natural law is that which nature has taught all creatures. For this law is not peculiar to the human race but extends to all living things which are born in the air, or land, or in the sea. Hence proceeds the union of male and female which we call marriage; hence the procreation and bringing up of children. For we see other creatures also enjoy a knowledge of this law.

(See Muirhead, sec. 55; Bryce, Studies in History and Jurisprudence, essay XI; Pollock, History of the Law of Nature, 1 Columbia Law Rev. 11; Salmond, The Law of Nature, 11 Law Quar. Rev. 122; Maine, Ancient Law, 70-99.)

1. Civil law and the law of nations are thus distinguished: all peoples which are governed by laws and customs use partly their own peculiar law, partly a law common to all men; for what any people has enacted as law for itself is peculiar to that state and is called its *ius civile*, as it were, the peculiar law of that very people; but what natural reason has established among all men, that is equally observed by all peoples and is called the law of nations (*ius gentium*) or, in other words, the law which all nations make use of.