clear warnings that the texts of individual laws have undergone metamorphosis in the interval between their promulgation and their incorporation into the Code. By situating the Code so firmly in its cultural context, and by making it a manifestation of that culture, M. rescues the work from becoming the preserve of primarily legal historians, and emphasizes the extent to which it can reveal by its very existence the attitudes and conduct of late Roman government generally.

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A JURISTIC FESTSCHRIFT

L. De Ligt, J. De Ruiter, E. Slob, J. M. Tevel, M. Van De Vrugt, L. C. Winkel (edd.): *Viva vox iuris Romani. Essays in Honour of Johannes Emil Spruit*. Pp. xi + 440, ills. Amsterdam: J. C. Gieben, 2002. Cased, €98. ISBN: 90-5063-308-0.

For the last fifteen years Jop Spruit of Utrecht has been supervising a translation of the *Corpus Iuris Civilis* into Dutch while also serving as the principal translator. This Festschrift to Spruit includes thirty-nine studies relating to the *CIC*, and ordered according to the *CIC*. Some of the studies focus on the legal texts themselves and are therefore concerned with the classical law or the law of late antiquity. Other studies focus on the use of the texts in later ages. As reviewer, I acknowledge my limits and select certain studies for mention; that I praise certain studies while omitting even to mention others means nothing.

G. C. J. J. van den Bergh combines law and life wonderfully in an essay on grape picking ('Legal trouble concerning a vintage'). In the text under review (D.19.1.25, Julian 54 *dig*.), the owner of a vineyard hinders his buyer from picking the grapes he had sold him, but the buyer's remedies recited by Julian are not easy to explain. The condition of the text, van den Bergh argues, was wrongly criticized by an earlier generation of scholars who simply did not understand how grapes were bought and sold. On the understanding that these grapes were sold by auction, that the seller set the terms, that the terms were construed against the seller, and that the seller's interference damaged the reputation of the buyer—all of these points amply supported in the sources—the text becomes beautifully clear.

The study of Roman law has benefited enormously from the discovery of a banker's archive of legal documents from Puteoli: the documents date from the 1st century A.D., and though discovered in 1959, it is only recently that they have been edited with the care they deserve. One document, treated in a study outside this collection (D. Monteverdi, in *Labeo* 42 [1996], 245), challenges current opinion on the *iussum domini*, an act by which a master renders himself liable *in solidum* under a contract made by a slave or son-in-power. The *iussum* has usually been regarded as a kind of 'authorization', issued to the dependant and enabling him to make contracts that bind the *paterfamilias*, but a Puteoli tablet shows the *iussum* being issued as the contract is concluded. This suggests the *iussum* was not an authorization, but a kind of guarantee, given to assure the third party. From these findings, L. de Ligt ('The Early History of the *actio quod iussu*') concludes that the *actio quod iussu* could not have been introduced by the Praetor before the *actio de peculio*—an action whose shortcomings the *actio quod iussu* partly remedies—thus confirming that Ulpian (29 *ed*., D.15.1.1.1) has indeed recited these actions in their historically correct order.

In the court procedure of the late republic and early empire ('formulary procedure'),

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the judge could become liable for his own misbehaviour. The judge 'who makes the case his own' is a subject in which the questions multiply and the literature grows while almost nothing ever gets resolved. C. de Koninck weighs in ('Iudex qui litem suam fecit'). The penalty against the misbehaving judge is one of many difficult issues. One text of Ulpian (21 *ed*., D.5.1.15.1), speaking of the judge who *maliciously* misbehaves, mentions a relatively light punishment (*vera aestimatio litis*), while a text of Gaius (3 *rerum cott*., D.50.13.6), speaking of *ordinary* misbehaviour, mentions a measure of punishment that could be quite serious (*quanti aequum religioni iudicantis visum*). The common opinion is that the latter standard is the right one, and that the lesser *vera aestimatio* is 'included' in the greater. De Koninck suggests instead that the *vera aestimatio* measure belongs solely to an action under the formulary procedure, where the misbehaving judge in effect changes places with the defendant of the original suit, and appropriately pays what the original defendant ought to have paid. However, in the later system of procedure (*cognitio*), where the original judgement is appealed, there is no such changing of places, and this leaves the judge on appeal to determine the penalty more freely. The Gaius text therefore belongs to the *cognitio* procedure.

If this explanation is attempting to track the historical development of the judge's liability, then it must account for the fact that the earlier text (Gaius) is describing the later procedure (*cognitio*), and vice versa. But I doubt the explanation gets this far: the Gaian text, even if it is written in anticipation of an appeal of the judgement, is speaking about the judge's liability under the praetor's edict *si litem suam fecerit*, not liability on appeal of the defective judgement. It is certainly possible that the judge is liable, via the edict, for the expenses of an appeal; this possibility was raised by Geoffrey MacCormack ('The Liability of the Judge in the Republic and Principate', *ANRW* 2/14 [1982], 23) some years ago. The measure of damages discussed by Gaius, however, is the measure under the edict, whence the conflict with the different measure of damages given by Ulpian.

I mention a few other contributions only briefly. J. B. M. van Hoek looks at how jurists commended one or another opinion as 'legally true', which is to say, correct within the abstract logic of the law. He looks at a series of texts in which a person's intention, often incapable of proof, serves the cause of truth and decides the outcome. A. M. Hol gives an outsider's view of Roman authority and lawmaking. B. H. Stolte discusses with great sensitivity two examples from the *Basilica* to illustrate the point that translators of the sixth century, no less than modern translators, were sometimes forced to undertake translation and exegesis at the same time. Alan Watson writes briefly on mistranslation in Justinian's *Institutes* (1.2 pr; 1.3.4, 5; 1.3.1), mistranslation that Watson attributes not so much to the carelessness of the translators as to the haste of the compilers.

There are many jewels in this volume which I do not have the space to mention.

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THEODORET

T. Urbainczyk: *Theodoret of Cyrrhus. The Bishop and the Holy Man.* Pp. x + 174. Ann Arbor: The University of Michigan Press, 2002. Cased, US$49.50/£35.50. ISBN: 0-472-11266-X.

Theodoret, the fifth-century C.E. bishop of Cyrrhus in Northern Syria, is one of several so-called 'Fathers of the Church' who have been attracting an increasing

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