

completely specific to the US legal and political systems, especially given the increased significance of intermediaries and funders in this country.

Similarly, Brickman is right to focus on the inherent conflicts of interest surfaced by contingency fee arrangements and the dynamics of class actions. A limit of the book though is its failure to consider the same conflicts in other areas where the contingency fee has not taken hold. The growth in corporate lawyers' incomes is at least analogous to the growth of the better paid plaintiff tort lawyers and has occurred largely on the back of the hourly rate. This broader analysis would suggest a broader problem, not confined to contingency fees. A more comparative analysis would also suggest a more critical eye be cast over the idea that it is the contingency fee that is to blame for the ills of the civil justice system. Amidst the bleak picture there is also an interesting development which is not dwelt upon. Spending on tort claims as a percentage of GDP has declined substantially in the US from a high in 1987 (p. 238). If this is right, Brickman's anxiety should have abated considerably. The finding also largely post-dates the period of data on which Brickman relies in asserting his '1,000%' claim. The growth may have stopped and, in fact, may have been reversed. This rather important possibility is not addressed.

RICHARD MOORHEAD

*Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity.*

By ROBERT M. FRAKES.. [Oxford University Press, 2011. xii, 309, (Tables) 6, (Bibliography) 31 and (Index) 13 pp. Hardback\_\_\_\_. ISBN 978-0-19-958940-1.]

THIS IS A WELL-WRITTEN, thorough and interesting book, and it makes a considerable contribution to the field of Roman law. *Collatio Legum Mosaicarum et Romanarum* is a late antiquity compendium comparing various Mosaic laws with their Roman law counterparts, and the author joins a select group of Roman law experts such as Mommsen and Daube who have discussed *Collatio*.

The book has three parts. The first part deals, in six chapters, with the *Collatio's* context, date, sources, method, author, and purpose, and here the author's complete command of all areas of Roman history, literature and law are brought to bear on some perplexing questions surrounding the *Collatio*. The author opens with discussion of the various struggles that form the background to the Collator's activity at the end of the fourth century: the pagan-Christian struggles, the division of the empire, Persian enemies in the East and the Germanic tribes pressing in the West. In the second chapter the author delves into a fascinating investigation of the early footprint of the *Collatio* and its manuscripts. Frakes gradually builds his case for dating *Collatio* to 392–395 CE, and along the way engages in enlightening discussion of *Collatio's* possible use as early as 538 CE at the third Council of Orleans (p. 38) and of how it was instrumental in Bishop Hincmar of Reims' 860 CE attempted exoneration of the Frankish Queen Theutbrega from her husbands' accusation of incestuous anal sex with her brother – the earliest extant explicit reference to *Collatio*. In the third chapter, the author turns to the *Collatio's* sources. The author leads us through a survey of Roman law sources including works by, or attributed to, the five famous jurists given special status in the Law of Citations, the *Codex Gregorianus* and *Codex Hermogenianus*,

and constitutions by Valentinian, Theodosius and Arcadius (pp. 66–82). Frakes then delves into the question of which language and version of the Bible was used by the Collator, including an interesting review of fourth century translations, and their range and influence. With great suspense the author investigates whether Jerome's Vulgate – written in the very same decade as the *Collatio* – may have been available to the Collator (pp. 82–98). The fourth chapter considers the Collator's method. The author accepts the theory advanced by Mommsen, Hyamson and others, that the *Collatio* is modeled on the second half of the Ten Commandments (pp. 99–111). The author shows that the Collator condensed or edited biblical passages “to exaggerate the similarity between biblical law and Roman law” (p. 113, 116), and argues more generally that the Collator had an “agenda of showing similarity between Hebrew and Roman law.” (p. 117) Finally, in the fifth chapter the author considers the Collator's identity – principally his religious affiliation, purpose and audience. The author concludes that the Collator was most likely Christian, probably a ‘middle-class’ lawyer in the western Empire, who wrote the *Collatio* as a way to reach out to his pagan colleagues (pp. 125–151).

The second part of the book is a newly amended Latin text of the *Collatio* with a new English translation by Frakes. The Latin text is based on Mommsen's text (p. 5), with over one hundred amendments proposed and explained. The English translation is eminently readable, though the present reviewer's Latin is not such as allows him to judge the veracity of the translation.

The third part of the book is the author's commentary on the *Collatio*, title by title. Here the author provides some detail on the biblical verses cited and their redaction, and provides a wealth of insights and sources on *Collatio*'s Roman law references. For example, the author brings a plethora of sources on Roman law treatment of loss of bees due to fire in his commentary to Title 12 (p. 294).

Frakes' command of the period and its literature allow him to write for both the novice and for the expert. On the one hand Frakes provides effective summaries of fourth century Church-state relations, and on the other hand he is able to drill down on the precise meaning of ‘novella’ – just how many years may have passed for something to still be novel – in the fourth century (pp. 60–1). However, despite the impressive breadth and depth of the book, there are two particular areas or angles of enquiry that would have added greatly to the book.

One such area is that of comparative law. Harold C. Gutteridge QC, first to hold the Chair of Comparative law at the University of Cambridge, wrote of the *Collatio* that it was the first work of comparative law (*Comparative Law* (Cambridge 1949) p. 11), and it is discussed, briefly, in the comparative law context in the *Oxford Handbook of Comparative Law* (Oxford 2007 pp. 7–9). The author similarly notes that the *Collatio* is “arguably one of the first works of comparative law” (p. 242), but even in the author's commentary, there is hardly any treatment of the comparative aspects of the *Collatio*. The comparison of Mosaic and Roman law cited in *Collatio* is sometimes so far-fetched that it led some scholars to consider the Collator incompetent (as noted by the author at p. 99) and doubt whether he was a jurist at all (see Leonard V. Rutgers, *The Jews in Late Ancient Rome* (Leiden 2000) p. 215), and even to suggest that it was a compendium of Roman laws to which some Mosaic laws were later added. At any rate, the distance between the two sources cries out for elucidation. A stark example is found in Title 5. There the author rightly notes

that the “passage is insightful for showing the different view of homosexuality in Hebrew vs. Greek or Roman culture.” (p. 264). Indeed, Mosaic law outlaws homosexual intercourse on pain of death, whereas the Roman law cited in *Collatio* outlaws homosexual rape and prostitution. The gap between Mosaic and Roman laws presented is so vast as to bring into question the meaning and purpose of the comparison, yet the author does not delve into the gap between these laws – how these laws on homosexuality were so vastly different, and what the Collator might plausibly have intended to demonstrate in juxtaposing two so very different legal provisions from the same area of law, and how a lawyer writing for lawyers could have achieved his goal with such glaring differences.

The second area that could have been dealt with more thoroughly is the theory of Jewish authorship of the *Collatio*, as proposed by Hyamson, Daube, Volterra and more recently Rutgers (op. cit.). As Salo Baron wrote of this topic sixty years ago: “The entire problem awaits further elucidation.” (*A Social and Religious History of the Jews* (New York 1952) v. 3 p. 431), and Frakes has certainly provided considerable elucidation. However, though the author writes that he “will give Rutgers’ argument detailed attention” (p. 132) his contention with the substance of Rutgers’ arguments is thin. For example, Rutgers shows at length that the vast majority of verses quoted by the Collator were of no interest to Church Fathers. Rutgers likewise shows that fourth century Church Fathers did not wholeheartedly accept all legal provisions of Mosaic law, and notes the complete absence of any reference to Christ. Frakes contends with the total absence of reference to Christ by claiming (pp. 146–8) that the Collator used open-ended terms such as *deus* as a conciliatory gesture to the pagan audience of the work, and shows that certain Church Fathers had a continued interest in the Ten Commandments (pp. 135–40). As a result Frakes leans very heavily on the ‘Ten Commandments’ theory with occasionally forced results. For example, Frakes is pushed into explaining how a law against Manichaeism comes under the tenth commandment (p. 109). Likewise in Title 5 – mentioned above – Frakes notes of the verses cited, “It is revealing that the Collator chose this passage and not one from Paul’s epistle to the Romans...” (p. 264) in which Paul speaks out against homosexuality, adding, “Apparently, drawing from the Ten Commandments was more consistent with the Collator’s plan for *Collatio*.” (ibid). Frakes leans so heavily on the Ten Commandments theory because he is able to show that Church Fathers respected the Ten Commandments. In this case, that theory seems to have misled the author; the Collator here cites Leviticus, not the Decalogue (which makes no reference whatsoever to homosexuality), and the Collator never once cites New Testament, so it is not particularly revealing that he did not cite Paul in Title 5.

Anecdotally one gains the impression that the author does not have the tools to fairly assess the Jewish authorship theory; for example, the author writes: “The Torah or Pentateuch includes the 613 Mitzvot (or ‘Commandments’) by which Jews should live their lives.” (p. 83) One cannot really disagree with that sentence, but the Torah is a lot more besides. For example, the entire book of Genesis is narrative, and this definition of Torah suggest a lack of familiarity with that source. Likewise, the reference to 613 Mitzvot is not really relevant, except that the author notes (p. 140) that the 613 Mitzvot are not built upon in the *Collatio*; that too is unsurprising, as the very notion of 613 Mitzvot dates to the third century, and it would be centuries before lists of the 613 Mitzvot would be compiled. Likewise, the statement that

the “Torah is a critical part of the Tanakh...” (p. 83) is akin to stating that the Digest is a critical part of the Corpus Iuris Civilis, and a reference to the synagogue (p. 117) also makes no sense to this reviewer.

The language is rich and varied, including such phrases as ‘pederasty’ (p. 139) and ‘syncretism’ (p. 145), though a few sentences needed more careful editing; ‘at li’ (p. 82 f.109) is a typographical error; ‘intent bent’ (p. 134) is awkward and ‘traditionally ... traditionally’ (p. 244) is superfluous. The author left the word ‘harusplex’ (p. 232) as in the original Latin, and according to the Oxford English Dictionary this is indeed a part of the English language, as this reviewer discovered.

In conclusion, the author has taken on a daunting task, and – despite some weaknesses noted above – has produced a fine book that sheds a very bright light on some varied and interesting aspect of Roman law. This book cannot be ignored by specialists writing on *Collatio*, fourth century Christian-pagan relations or fourth century Roman law, and anyone with an interest in the history and evolution of Roman law will find this book rewarding and enlightening.

ARYE SCHREIBER

*Fifty Years of Family Law: Essays for Stephen Cretney*. Edited By REBECCA PROBERT and CHRIS BARON. [Cambridge: Intersentia. 2012. 331. pp. Hardback £69.00. ISBN 978-1-78068-052-1.]

AS THE NAME SUGGESTS, “Fifty Years of Family Law: Essays for Stephen Cretney” celebrates the diverse and profound contribution of one of the foremost legal scholars of the last century. Cretney’s career has spanned a range of legal professions, including practice as a city lawyer, Law Commissioner, Professor and Dean of Law at Bristol University and Senior Research Fellow at All Souls College, Oxford. In addition to these achievements, he has produced textbooks that have guided generations of students through the quagmire that is modern family law, including the authoritative *Principles in Family Law*, and *Family Law in the Twentieth Century: A History*, which was described in the Times Literary Supplement as “the book of the century”.

Likewise, the authors who have come together to honour Cretney hail from a cross-section of legal professions at a variety of career levels – from up-and-coming researchers to revered professors, a practicing barrister to a Supreme Court judge.

If it were not already clear from the calibre of authors who rushed to contribute to this book, the esteem and affection in which Cretney is held as an academic and an individual is patent in every chapter. As the editors make clear, “[t]his book is a labour of love”. The result is an excellent volume of 23 contributions, which provides a fascinating snapshot of the spectrum of family law issues, and highlights the scope of Cretney’s influence. There are too many chapters to do each author justice, so with apologies to many valuable contributions, I will focus on some few chapters that illustrate some of the central themes that run throughout this collection.

Thanks to Cretney’s seminal contribution in elucidating and understanding the history of family law in England, many of the chapters draw on a historical perspective in undertaking their analysis of the subject in question. This