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Lost in Translations

Roman Law Scholarship and Translation in
Early Twentieth-Century America

Timothy G. Kearley

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To the memory of my mother and father, Louise & Gene

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FOREWORD

Timothy Kearley continues to rewrite and inspire new histories of the translation of Roman legal texts in the twentieth century. His work on Judge Fred Blume's translation of the Justinian Code has spurred a renewed interest in both the modern translator and the *Corpus Iuris Civilis*. Kearley's efforts in retyping and mounting online the text of over 4,000 pages has made the work of both accessible to a worldwide audience. Now published in three volumes by Cambridge University Press, Judge Blume's translation has been reworked by a veritable Who's Who of Anglo-American legal scholars under the title of *The Codex of Justinian: A New Annotated Translation*, as edited by Bruce W. Frier.

Having thoroughly explored the background of Blume's life in a series of articles, Kearley has now turned his attention to the contemporaries who also essayed translations of Roman law. Notably, Samuel P. Scott of Ohio had attempted the same task but, in comparison to Blume, failed miserably. Kearley examines what caused Scott's failures and Blume's success. Other scholars, like Clyde Pharr in the 1930s and 1940s, attempted translations of Roman law, in Pharr's case, the Theodosian Code. Pharr used great portions of Blume's translation of similar passages from the Code of Justinian and thereby both improved and expedited his publication while, it is arguable, delaying the publication of Blume's work. These issues are explored both in an article I wrote about the translation of the Theodosian Code by Pharr and his graduate students and by Kearley in this book as well.

The value of this current book lies in answering in great and interesting detail the question as to why so many classicists of the twentieth century interested themselves in translating Roman law. By going back to colonial times, Kearley examines the study of the classics in America and how it both advanced and declined. One may speculate that the disillusionment of many people after World War I led scholars to think that a system of universal law, such as the Romans had developed, might lead to more unity of spirit in the period after the War to End All Wars. The fascinating postscript to this idea is the development of the Court of Justice of the European Union today.

I first met Timothy Kearley while doing research on Clyde Pharr well over a decade ago. I did a Google search to see if anyone else was posting work on Pharr, and came across the webpage he had created about Judge Blume. We have corresponded via the internet for years and shared copies of letters and documents between the two translators. Tim has truly become a valued colleague whose contribution to the study of Roman law cannot be overstated.

In this book Kearley uses all his skills as a researcher and interviewer to bring to life these little-known legal scholars who worked assiduously to bring to life the legal reasoning of the Romans. Today there are courses in Roman Law all over the world, and it is due in great part to the efforts of both legal scholars and translators of the enduring texts of Roman law.

Linda Jones Hall,
St. Mary's College of Maryland,
Professor Emerita of Late Antiquity,
August 2017

PREFACE

This book, which branches off into several paths, had as its origin my desire to tell how Friedrich Heinrich Blume, a German immigrant who became a Wyoming Supreme Court justice in 1920, singlehandedly translated Justinian's Code and Novels into English. He eventually produced a 4,500-plus page annotated version of these ancient laws. Although Blume's *Annotated Justinian Code* never saw print, I retyped and edited the manuscript and published it online¹ more than forty years after his death. I thought his herculean effort was a tale worth telling, and I did so around the time of that electronic publication.²

However, my ongoing research revealed other interesting, related, stories, all of which deserved to be told. The recent publication of *The Codex of Justinian*³ is the impetus for relating them here. The *Codex of Justinian* is a new English translation of the Code by an Anglo-American editorial panel that based its collective work upon Justice Blume's "lone-wolf" effort. I hope the new work finally will bring Blume the attention he long has merited. However, the other stories I referred to above also are worthy of being written, and their protagonists deserve attention as well.

In continuing to study Blume's involvement with Roman law, I discovered other Roman law scholars and translators of his era who now are little known: Samuel Parsons Scott (1846–1929) and Clyde Pharr (1883–1972), both of whom created massive translations of ancient Roman law; Charles Phineas Sherman (1874–1962), a lawyer-professor who translated some Roman law and wrote prolifically about it; and, finally, Charles Sumner Lobingier (1866–1956), a judge-professor who wrote about Roman law, translated a little,

1. <http://www.uwyo.edu/lawlib/blume-justinian> (last viewed April 26, 2017).

2. Timothy G. Kearley, *Justice Fred Blume and the Translation of Justinian's Code* 99 LAW LIBR. J. 525 (2007).

3. THE CODIX OF JUSTINIAN: A NEW ANNOTATED TRANSLATION, WITH PARALLEL LATIN AND GREEK TEXT, BASED ON A TRANSLATION BY JUSTICE FRED H. BLUME (Bruce W. Frier ed., 2016).

championed the publication of Scott's work, and was connected to all of the others. All of these men were prominent during their lifetimes but are largely forgotten now.

Although Scott was some thirty years older than Blume, the others were roughly part of the same cohort. Blume, Lobingier, and Sherman all attended college or university between 1884–1898, during the Gilded Age, with Pharr attending slightly later, in the first decade of the 1900s. Why, I wondered, did these intelligent, energetic men devote so many years of their lives in the twentieth century to studying and writing about ancient Roman law? And what equipped them for such a demanding endeavor?

The answers I found make up the threads of my narrative. They include the histories of American culture and education—including legal education—whose institutions were undergoing great changes during the Gilded Age and on into the first few decades of the twentieth century. The answers also involve descriptions of the legal profession, the function and uses of Roman law in America during that time, the Restatement of the Law movement, and the Riccobono Seminar of Roman Law in America, the last of which brought together many of the leading American Romanists of the era. I have not tried to survey all Roman law translation and scholarship of the era but have, rather, focused on the five scholars noted above as being good representatives of the class.

I have told some of these stories previously in academic journals,⁴ but not as completely, or in the integrated way I present them here; moreover, some of these tales have hardly been told at all. In particular, almost nothing has been written of Charles Sumner Lobingier, and little about Charles Phineas Sherman (aside from his autobiography,⁵ which offers a highly selective perspective). Clyde Pharr was the subject of a recent article, but I have more to add of him, too.⁶ Also, after further research and consideration, I have added information about, and changed my opinion on, some the subjects I wrote of before. For example, I have included here a significant amount of relevant and highly interesting information I discovered in the correspondence of Roscoe Pound. Pound's connection to Lobingier, Sherman, and the

4. In addition to the history of Blume's translation work cited in note 2 above, they are: Timothy G. Kearley, *The Enigma of Samuel Parsons Scott*, 10 *ROMAN LEGAL TRADITION* 1 (2014); & Timothy G. Kearley, *From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth Century America*, 108 *LAW LIBR. J.* 55 (2016).

5. CHARLES PHINEAS SHERMAN, *ACADEMIC ADVENTURES: A LAW SCHOOL PROFESSOR'S RECOLLECTIONS AND OBSERVATIONS* (1944).

6. See Linda Jones Hall, *Clyde Pharr, the Women of Vanderbilt, and the Wyoming Judge: The Story Behind the Translation of the Theodosian Code in Mid-Century America* 8 *ROMAN LEGAL TRADITION* 1 (2012).

Riccobono Seminar seem not to have been written of previously. In fact, much of the information I share here is archival and therefore has not widely available or discussed. I also have gone into much more detail here than in my previous writings about the history of American education as it relates to the classical past.

My thesis is that, to a significant extent, the Roman law translation and scholarship of the men whose stories I tell was motivated and supported by their classically-oriented educations and, more generally, by a pervasive American cultural connection to the classical past that we find hard to imagine today. Although each of these scholars had personal motives for his work—the principle one being to create an historical legacy—each of them also felt connected to the Roman legal tradition in a way the modern American lawyer would find puzzling. Many of the best known American lawyers and legal scholars of the first half of the twentieth century had classically-oriented educations and were knowledgeable about, or at least sympathetic to, Roman law. Roscoe Pound is an excellent example; while known mainly for being a long-time dean of the Harvard Law School and as a legal philosopher, Pound also was a Roman law scholar. Given this milieu, it seemed perfectly reasonable and desirable to Scott, Blume, et al. to devote much of their lives to translating or explicating that ancient law.⁷

If I have written in more detail about a few topics than some readers care to know, I hope those readers will skim when necessary but still will follow the compelling stories involved. In addition to presenting my version of this history, I want to facilitate the reader's own exploration of the subject. To that end, I have added appendices listing all of the writings of the main characters, along with reviews of those writings, as well as a selective bibliography of the sources I found most useful in my investigations. I hope that readers will find the narrative sufficiently interesting and compelling that they make their own, further inquiries into the founding sources of our civilization.

7. It is worth noting that devotion to Roman law also seems to operate as something of an elixir and anti-aging medicine. Our subjects worked productively past the typical age of retirement and enjoyed an average lifespan of nearly 90 years. Justice Blume lived to be 96 years of age.

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Many knowledgeable librarians and archivists went out of their way to help me in researching this book. They include those at: the Thomas Jefferson University Archives and Special Collections, Bucknell University Archives and Special Collections, Catholic University of America American Catholic History Research Center and University Archives, Yale University Manuscripts and Archives, the UCLA Darling Law Library, the University of Texas Briscoe Center for American History, the College of William and Mary Wolff Law Library, and the Wyoming State Archives.

I also benefited greatly from the support of my colleagues at the University of Wyoming Hopper Law Library over the many years of my work with Justice Blume's material. In addition, my correspondence and mutual assistance pact with classicist, and Pharr scholar, Professor Linda Jones Hall provided an injection of information and enthusiasm into my research.

Finally, I want to express my appreciation to Sheri Aajul at the University of Wyoming College of Law for her careful reading of the manuscript and her editorial suggestions. Any remaining errors are my own.

