

circumstances and problems. Hence why countries frequently rely on legal transplants from other legal systems rather than looking in Justinian's *Institutes* for answers. Thus, in this sense there *is* accumulation, the extent of which depends on the lifespan of the usefulness of pre-existing knowledge. Second, *Rethinking* entirely ignores the fact that modern legal systems are now *far more complex and intricate*. A modern legal system employs more judges, at greater geographical distances, deciding more cases, of more complexity, at equivalent or greater levels of consistency, than past ones. It is extremely unlikely that an Ancient Roman, seventeenth-century French or eighteenth-century English legal system could handle the degree of complexity modern legal systems do. Nor, for that matter, would their operators be able to easily adapt them to these greater demands. Significant institutional knowledge is present in the modern legal system, including techniques and methods which are not obvious without the benefit of hindsight. Given legal doctrine is connected to procedure and the institutional framework of the legal system, and thus needs to be tailored for greater scale and complexity, this "institutional knowledge" also includes "legal knowledge" of the kind Samuel focuses on. Whilst we might deny that law progresses towards truth like science (possibly) does, this does not preclude all development: law, like engineering, is constantly inventing solutions for novel problems and needs.

Perhaps all of this is to simply say that *Rethinking Historical Jurisprudence* is heavy on method and theory, but light on historical context. Instead, Samuel takes several fairly categorical stances: that there are no scientific revolutions in law (or even significant changes in method across all of history), and legal knowledge does not develop, accumulate or progress. Yet these conclusions preclude many of the fascinating questions which Samuel's work provokes. Even if legal knowledge is cumulative in some sense, is it able to keep up with other changes in society? How is this knowledge produced, and what kinds of historical conditions explain when legal practice, concepts and techniques undergo significant change? What makes certain legal techniques more effective than others for longer times: why have Ancient Roman methods continued to stay in use whilst the forms of action have been left behind? Above all, can we imagine future changes to our legal methods, and if so, can we predict how these changes will play out given past precedents of upheaval? These are the kind of questions appropriate for twenty-first-century legal studies, and the kind which *Rethinking Historical Jurisprudence* is so adept at provoking.

ALEC THOMPSON

GIRTON COLLEGE

*A Sourcebook on Byzantine Law: Illustrating Byzantine Law through the Sources.* By DAPHNE PENNA and ROOS MEIJERING. [Leiden: Brill, 2022. xvi + 224 pp. Hardback €112.00. ISBN 978-90-04-51470-6.]

Any book on Byzantine Law is to be welcomed. For too long it has been a neglected field. Legal historians of the Western tradition have been disadvantaged with a (at least relative) gap in knowledge of some significance. It is representative of a



more wide-ranging neglect of the history of the Byzantine Empire. Other scholars are better placed to judge whether Byzantium's largely Orthodox Christian heritage has, historically, played a part in this (Edward Gibbon did not exactly help). Of course, the reception of Roman Law in the later Middle Ages rendered attention to Byzantine Law (not aided by its obvious and appropriate reliance on the Greek language) of much lesser importance. Slowly, over the course of the past century, such (general) neglect has begun to be addressed and, in more recent times, all legal historians should be indebted for the very important work undertaken by scholars at the University of Groningen's School of Byzantine Law, two of whose members have contributed to this important volume in Brill's series *Medieval Law and its Practice*.

The idea for this volume is a good one. That is, to advise the reader, likely to be a scholar interested in Byzantine Law, unfamiliar with it, but (perhaps) wishing to engage in further and more profound research into the subject; as to the pathways (signposts, if you will) to continue that research to the next level. Sometimes (in academic works) the authors (experts in their particular field) can forget that there are many interested scholars, not being expert in their particular field, who, dipping their toe in the given sea for the first time, may be completely lost, overwhelmed and bewildered by works of the highest academic scholarship, but impenetrable to a neophyte. In this respect, this volume, which is well-written and clearly expressed throughout, manages successfully to tender that welcoming hand for the uninitiated.

With all the good intentions and inherent value of this volume operating to its advantage, it is a pity that this book is not written with more confidence. Instead of enunciating, from the outset, what the book is not (a weakness, surely, as a part of a title to any section of a book), more emphasis (than that provided) should have been placed (rather) on the purpose the book is intended to serve. Essentially, surely, that it is a book for those interested in legal history, a particular part of it, for those both who may already have some knowledge of Byzantine Law (but still would value the acquisition of a better structuring of that knowledge) and for those who may know little or nothing (about the subject). In this sense, the book is wise to use the reign of Justinian as fulcrum as it helps the reader connect Byzantine Law with its earlier (and much more familiarly Roman, at least to a novice) legal heritage, culminating in his great codification (the *Corpus Iuris Civilis*) of the earlier sixth century AD.

Chapter 1 ("The Sources of Law before the Time of Justinian") is appropriately brief. The literature on this subject is already enormous and the authors have, correctly, taken note of this. Chapter 1, therefore, serves (for the reader) only as a reminder of what came before. It is a pity, however, that a section (to the chapter) was not added considering how the Byzantines would have considered the pre-Justinian material, what was available/might have been available and whether (although it is likely that this may not be entirely known) they consulted (and, if so, to what extent) what was available. Also, from where law was studied (Beirut), the chapter jumps, somewhat untidily and suddenly, to "The last fragment of sources of the pre-Justinianic period (Text 9.2) is a part of the so-called *Fragmenta Sinaitica*" (p. 12). Both discussions are important, but maybe they could have been separated better, to avoid disconcerting the reader.

Chapter 2 ("The Time of Justinian"), as with Chapter 1, walks on well-trodden earth. To avoid the danger of an undue proportion of the work being merely skimmed by a reader, already more than familiar with the compilation of the



Emperor Justinian, the authors skilfully first address, briefly and in turn, the Code, Digest, Institutes and Novels, before then focusing to a significant degree on the essential function of the chapter, being emphasis on the teaching of Justinian's legislation during the Byzantine era. Mindful of the equivalent section in Chapter 1, and by way of a continuum, it is helpful that Chapter 2 includes a section on how the law was taught both during Justinian's reign and subsequently. However, it might have been interesting if the authors had considered more whether the surviving manuals give an accurate picture of how the law was taught. In instances such as these (this is true of the surviving fragments of the juristic literature, also), it is admittedly difficult for any author to obtain an accurate picture of the representativeness of that which has survived when compared with what has been lost (including knowledge now forgotten).

For those less familiar with Byzantine Law and the principal works and legal scholars from the period after the Emperor Justinian until the fall of Constantinople (in 1453), the book really begins to come into its own from Chapter 3 ("From the End of the Sixth Century up to and including the Iconoclastic Period"). Nevertheless, it might have been interesting if a little more attention was given to what the indicated texts were designed to achieve and what might have precipitated/may have prompted even necessitated their writing/compilation. Chapter 4 ("Macedonian Renaissance") continues in the same vein. However, if the chapter has a weakness, it should (perhaps) have dedicated more space to the Basilica (not least in light of the attention dedicated, in Chapter 2, to Justinian's legislation). This could have been done by way of introduction to the Basilica in Chapter 4, with a special and separate chapter, between Chapters 4 and 5, considering, in more detail, the Basilica individually. This represents surely, therefore, a missed opportunity.

Chapter 5 ("From the Eleventh Century up to 1453") brings Byzantine civil law to its denouement (1453). The authors have done well to give special attention at the beginning of the chapter to the Basilica *scholia*. In any study of Byzantine Law, from the Basilica onwards, it is important not to overlook these thoughtful outpourings (explanations, interpretations and updates). Chapter 6 ("Canon Law") quite rightly stands apart from its predecessors. The first section of Chapter 6, particularly for a twenty-first-century reader, does well to place Byzantine Canon Law in its proper context, its origins, its content and the function of it.

The selected extracts in the book could have been better chosen. There is a feeling of random inclusion about them. The summaries, providing context for a given extract, are helpful and it is, of course, acknowledged that a work of this length and ambition could never have done justice/been representative of the sheer vastness of the subject matter considered in the texts and the material, but, all the same, perhaps each chapter (at least from Chapter 3 onwards) could have focused on a particular (given) subject of Byzantine Law: were that delicts or contracts, property law or succession (for example). One of the greatest strengths of the book (of which there are many) is the Select Bibliography (both primary and secondary sources) at the end of each chapter, once again providing signposts (for both type of sources) to the interested reader. If there is one major item missing in the book as a whole, it is the absence of a concluding chapter (although it is acknowledged that a sourcebook, of this type, does not have to include such). It would have been good if the authors (by way of farewell) had conveyed their own thoughts on what they hoped the reader might have particularly found useful or gained from the work, how the knowledge acquired



(by virtue of the book) might be used (as a platform for additional and deeper research) and (finally) to pose some matters for consideration which the authors themselves believe remain begging and/or require further investigation. Scholarship establishes, for individuals, expertise; this knowledge should be shared (as it is in this book) and from there communities (of scholars) can be established and maintained, but the absence of a conclusion (in this instance) does leave the reader rather isolated, bereft even, and perhaps wondering what next? Nevertheless, the authors should be congratulated for their continued work on such an important subject and for bringing (essentially) the sources of Byzantine Law to a wider audience. Long may their work and that of their successors at the University of Groningen thrive in their endeavours.

TIM POTIER

FLETCHER SCHOOL OF LAW AND DIPLOMACY, TUFTS UNIVERSITY