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Book Review: Slave Law in the Americas

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Slave Law in the Americas. By Alan Watson. (Athens and London: University of Georgia Press, 1990. Pp. xv, 179. Notes, index. \$25.)

Alan Watson is a distinguished Roman law scholar who has written extensively on the way in which legal systems borrow from other legal systems. In this slim volume he examines the influence of Roman law on the laws of slavery in the Americas, concluding that the Roman law heritage of the civil-law countries accounts for the major differences between the laws of slavery in Latin America and English America.

While acknowledging the impact on legal development of social, economic, political and religious factors, Professor Watson contends that the law has a large measure of autonomy. Thus similar laws may exist under quite different social and economic circumstances. "[T]he government is usually uninterested in the precise nature of most of the legal rules in operation." (p. 1). Legal rules are made largely by a legal elite—jurists in Roman law, professors in the civil law and judges in the common law systems. They use "legal logic" rather than directly examining the needs of the society. One aspect of that logic is borrowing—either using analogy within a legal system or taking from another legal system with high prestige. In that fashion the slave law of Latin America was profoundly affected by the reception of Roman law in the civil-law systems of the continent.

Chattel slavery was an established Roman institution which was not based on race. Slaves could be educated and could hold responsible positions. Although masters held legal title to assets amassed by slaves, slaves could purchase their freedom with those assets. Freed slaves could become citizens, and their children were free of restrictions. Unlike Roman slavery, slavery in the Americas was based on race. That fostered an ideology of racial inferiority which encouraged restrictions on manumission and discrimination against freed slaves. The laws of English America restricted manumission and discriminated against freed slaves far more than the laws of the rest of the Americas. Watson argues that the reception of Roman law explains this difference.

The chapters on the law of slavery in the Americas of Spain, England, France, Portugal, and Holland are short. For example, the chapter on England and slave law in America is twenty pages, focusing on South Carolina as the representative state. Watson limits his examination to the legal rules, and he admits it is difficult to deduce much about a society from an examination of its legal rules. Thus he avoids the controversy over the actual conditions of slavery in the Americas—the relative levels of cruelty of masters, relative levels of manumission or relative levels of racial prejudice. Within the limits he sets, Watson convincingly demonstrates the Roman law derivation of much of the law of slavery in the Americas.

Professor Watson is less persuasive in arguing that the reception of Roman law in England would have made the law of slavery in English America less racist. The crux of his argument is that because Roman law had a dominant influence on the laws of slavery in the colonies of the rest of America, "it would be presumptuous to believe that if Roman law had been received in England, Roman slave law would not have had a very powerful effect on the law of slavery in the English colonies and southern states" (p. 127). But that does not prove that the reception of Roman law would have affected the law of slavery in the different context of the English colonies. There are too many other candidates for explaining the differences in the laws of the different nations in the Americas. The influence of the church in Latin America, the existence of a poor white majority in English America, and differences in the social, political and economic traditions of the European nations may be equally or more important factors than the reception of Roman law.

Courts in English America looked to Roman law for many of the legal principles they applied. The restrictions on manumission and the limitations on free blacks were largely products of legislation rather than of the "legal elite." Under Watson's theory, government is responding to social forces when it does take an interest in legal rules. His book does not show how the reception of Roman law alone would have altered those social forces. What it does show is how the reception of Roman law affected the law of slavery in the rest of the Americas.

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