Daube On Roman Law
The Scales of Justice

Analyzes in various cultural contexts the scale as an image of justice. Modern jurisprudential attitudes are hostile to the black and white model of the law inherent in the notion of the scales of justice.

Compromise

The evolution of the verb “to compromise”: from the ancient concept of a promise to arbitrate to both a preliminary and final arrangement attained by simple negotiation as well as arbitration. The Jansenists played a major role in the verb also acquiring its modern pejorative sense “to hurt.”

Pecco Ergo Sum

1) The verb “to be” is etymologically related to “sooth” (truth) and “to sin.” Truth is often about something negative, hence often about wrongdoing. 2) The lex Salica of the Franks applies the term sunne, truth, reality, to the specific situation where there is a solid reason to disregard a summons to a trial. “That which is,” sunne, here refers not to an offender but stands for the circumstance justifying absence from the trial. The same word can often refer to unlike things in unlike fields. Sunne may be a remote descendant of the similar use of the term morbus s antics, “true” illness, in the XII Tables (fifth century B.C.).
A Corrupt Judge Sets the Pace

Important advances in the law can come from corrupt judges.

The Self-Understood in Legal History

Why in early law codes some fundamental rules and institutions are passed over in silence.

Standing in for Jack Coons

Why abstract terms (consensus, unlawfulness, and loss) were not introduced into Roman law until the time of the Principate: the abstract or general remains unremarked upon because concrete matters take up attention. How concepts of “time” and “space” first arose.

Money and Justiciability

The introduction of money led to transactions, previously belonging to the world of barter and community relations, becoming more locked into a rigid legal world of impersonal arrangements. Justiciability tends to be antithetical to human sentiment.

Fashions and Idiosyncrasies in the Exposition of the Roman Law of Property

No scholarly effort is independent of cultural trends and fashions. Contemporary bias is detectable when scholars discuss who owns the children of slaves, even who owns anything. Interpolations ascribed to Justinian’s Digest often reflect the character of the commentator.

The Marriage of Justinian and Theodora.

Legal and Theological Reflections

Legislation passed by Justin for the benefit of his nephew Justinian allowed low-status actresses and ex-actresses to become wives of noble-men. The notion of new birth informed the legislation.

Dividing a Child in Antiquity

In most cases concerning child custody after divorce, children went to one parent or the other. Sharing time with the children was not an option.
Did Macedo Murder His Father? 143

Beginning with the one sentence paragraph, “It is to be feared that he did,” this paper analyzes the background of the senatusconsultum Macedonianum enacted under Vespasian and argues that Macedo, having borrowed money hoping that he could repay the debt after the death of his paterfamilias, was guilty of patricide. Refutes the arguments by Beseler that Macedo was acquitted.

The Preponderance of Intestacy at Rome 189

The common proposition that testate succession was the rule throughout Roman history is wrong. Intestacy predominated among both the have-nots and the haves, and this was so in early, middle, and late periods.

What Price Equality? Some Historical Reflections 201

1) When women, slaves, plebeians, and children attain equality there are attendant losses, added duties, and restraints. 2) Unwanted salvation shows up in the interaction between one who rescues against another’s wishes and the rescued person putting up with a painful benefit.

Princeps legibus solutus 229

A delegation of Jews to Rome in the time of Domitian argued that God heeds his commandments, thereby reproaching Domitian for disregarding his own laws. While the delegates did not accuse Domitian of putting himself above the law, they assumed that he would abuse the potential for obtaining exemption from certain regulations. The source reflects an early stage of the development of the maxim that the emperor is above the law.

Fraud No 3. 233

Examines Roman attempts to thwart irksome legal restrictions by some scheme or device. Fiddling with time is the major feature of one type of dodge.
The *lex Fufia Caninia* and King Arthur

The *lex Fufia Caninia* limited the number of slaves that could be freed in a will. A legend transmitted by Ausonius about a Delphic Oracle’s answer as to who was first among the Seven Sages contributes to the dodge attempting to circumvent the statute: the names of the manumitted slaves were written in a circle. The underlying notion, that a circle has neither beginning nor end, may also have influenced the role of the round table in the legend of King Arthur.

The Influence of Interpretation on Writing

1) Discusses attributes of legal expression (intelligibility, brevity, and accuracy) in terms of their impact on the reader, especially where meaning is obfuscated or hidden despite ideals of clarity. 2) How an interpreter chooses to comment on an authoritative work of law or literature produces surprisingly different types of commentaries. Writers created the popular literary genre, the Cento, by taking lines and half-lines from the works of Homer and Virgil, which were regarded as containing all wisdom, and stitching them together. Pleasure lay in the reader recognizing the original context of the line or half-line and admiring the new application.

The Three Quotations from Homer in Digest 18.1.1.1

Ancient legal authorities, Paul and Sabinus, disagreed about whether a view of an illustrious poet could be used as a legal argument. Might Homer be interpreted as supporting the proposition that money was essential in sale?