

Roman Law. Linguistic, Social and Philosophical Aspects. By DAVID DAUBE, Regius Professor of Civil Law, University of Oxford. (The Gray Lectures, 1966.) [Edinburgh: at the University Press. 1969. vii, 194 and (Index) 9 pp. 45s. net.]

LANGUAGE is full of traps in historical scholarship as in other intellectual endeavour, no doubt more so where other peoples' or ancient language is the material of study. But there are regularities in language which are shared by more than one tongue. If not everyone who cooks is in English a cook, so not everyone who *scribit* is in Latin a *scriptor*, not everyone who *imperat* is an *imperator*, and not everyone who *spondet* is a *sponsor*. The agent noun has not necessarily so wide an ambit as the verb from which it is formed; very likely it denotes one who performs the action indicated by the verb in a special or striking way. It may seem obvious that, as it is not only a cook who cooks, so it is not only an *imperator* who *imperat*, and not only a *sponsor* who *spondet*. Yet the thesis has been advanced, by Mitteis and others, that *spondere* must originally have meant to promise as a *sponsor*—as a guarantor or surety.

Professor Daube's thesis in the first lecture published in this little book is that untested assumptions about language, for example that there must be an absolute, initial agreement between a verb and its agent noun, have contributed to false historical conclusions. Much new illumination can also come, the author shows, from attention to the evolution of action nouns, for example in English of neutralisation from neutralise, or nationalisation from nationalise; in Latin of *fructus perceptio* from *fructum percipere*, while, significantly, there was no emergence of *fructus separatio*: "strong and unexpected support" argues Professor Daube, for the thesis that "acquisition of fruits on separation is spurious, a post-classical intrusion into the earlier texts." The appearance of the action noun marks the attainment of a relatively advanced stage of institutionalisation of the action in question, and the history of the emergence of institutions may be charted by exploring the evolution of the respective action nouns. There is an illuminating discussion of the fact that the action noun *alienatio* precedes by hundreds of years the appearance of *acquisitio*: "conveyance" is an institutionalised conception long before "acquisition." Some verbs never generate the action noun, and if *fidepromissio* and *adpromissio*, for example, are totally absent from the sources, Professor Daube will have us think again about the concepts which these terms are supposed to represent. Sometimes, it may be, the institution, as well as the word, is a modern invention (see the discussion of *confirmatio donationis* at p. 38, note 3), or the modern invention of the action noun may invest an old rule or practice with a novel and false significance (cf. pp. 51–52, *denegatio actionis*).

Lecture 2, concerned with social and economic realities beneath the "systematic coherence and conceptual smoothness of the law," begins with a splendidly sustained piece of irony, directed against the view that the third chapter of the *lex Aquilia* imposed a penalty of the full value of the property damaged. Professor Daube's burlesque masks a formidable attack, though it should be said that it is only the extreme form of the opinion assailed, which holds the entire value to have been still the measure of damages in the classical law and as such applicable to all kinds of property, that suffers the full force of his criticism.

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Daniel F McAuley



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