

There is no doubt Adriaan Lanni's book should be read by anyone interested in Greek litigation. Moreover, this is one of the books concerning ancient law that might be of more than marginal interest to socio-legal scholarship. By raising important questions about formalism, relevancy and predictability in Athenian law, it may inspire similar inquiries into Roman law. It is well-known that the Roman administration of justice relied on legal sources (statutes, senate's resolutions, praetor's edicts, imperial pronouncements, jurists' replies, and their authoritative commentaries) to provide rules of decision. But until the influence of Byzantine bureaucracy, Roman law lacked, as Weber pointed out, many rational and systematic qualities, which only centuries of modern civil law scholarship brought to perfection. It was supposed to guide – with the help of the jurists' advice – the lay magistrate in his decision to deny or grant a legal action, and in narrowing down the relevant legal and factual issues of the lawsuit, according to which the lay judge was to grant or deny, with more or less discretion, the plaintiff's claim. But the magistrates and judges also had to find the facts, and these were embedded in the context of Roman hierarchical society and could be variously characterized. In case of serious offenses, there probably was – like in Athens, as Lanni argues – the certainty of summary treatment for common criminals, while the trials before the juries were nothing less than Gadi-justice. Looking at adjudication from the law in books perspective, Weber was adamant that outside political trials, the supervision of legal procedure by the jurists ensured formal justice. If we had more opportunities for studying Roman law in action, it might turn out that extra-legal considerations loomed large behind judicial decisions, and that prediction of specific outcomes was based as much on jury bias and the sociological structure of the case as the legal rules.

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JILL HARRIES: *Law and Crime in the Roman World*. Cambridge University Press, Cambridge 2007. ISBN 978-0-521-82820-8 (hb), 978-0-521-53532-8 (pb). X, 148 pp. GBP 47, USD 80 (hb), GBP 16.99, USD 28 (pb).

O. F. ROBINSON: *Penal Practice and Penal Policy in Ancient Rome*. Routledge, London – New York 2007. ISBN 0-415-41651-5. VIII, 255 pp. GBP 60.

Roman law defined "crime" as an offence subject to the public legal process (*iudicium publicum*), while treating some offences as private wrongs (*delicta*) subject to the civil penal process. These processes had in common that they were concerned with "wrongdoing", and condemnation incurred some form of penalty (*poena*), which distinguished them from the civil processes designed merely for the adjudication of disputes. But wrongdoers were also disciplined and punished by the magistrates empowered to use their policing power (*coercitio*) to maintain the public order, and to use their administrative procedure (*cognitio*) to hear and judge criminal accusations. Roman law concerning crimes, procedures and punishments – from the times of the Twelve Tables to the emperor Justinian – is also central to *Law and Crime in the Roman World* written by Jill Harries. The perspective of the book is, however, distinctly socio-legal. Roman law and society histories abound, but the traditional domain of Roman criminal law remains a less charted territory. Thus, in addition to the legislation and legal writings of the Roman jurists, Harries analyses the "extra-legal" sources for competing discourses and counter-cultures,

maps out tensions between the legal traditionalism and changing social values, and underlines the role played by the judges, advocates, and litigants behind the legal development.

The two chapters following the introduction are devoted to the "criminal" process, and begin with discussion of the Roman jurists' traditionalist and Rome-centered legal discourse of crime as defined by the Late Republican statutes instituting the standing jury courts (*quaestiones*, also known as *iudicia publica*). Augustus' legislation fixed the list of public crimes that survived five centuries, to the Digest of Justinian: treason, adultery, public and private violence, murder and poisoning, parricide, forgery, extortion, offences related to food-supply, embezzlement and sacrilege, electoral corruption, and kidnapping. In practice, the processes before the *quaestiones* were of no use in the provinces, and were even in Rome superseded under the Empire by the *cognitiones* taking place before the magistrate acting as a single judge. The wide discretion permitted to the magistrates also allowed redefinition of the old offences labelled "crime" (such as corruption of elections that had ceased to exist), and prosecution of new ones as "criminal" *extra ordinem* – outside the *iudicia publica* statutes. Meanwhile, the treatment of the offenders became harsher and was legally differentiated according to their social rank. This included the spread of judicial torture from slaves to freemen and eventually to high-status people. Harries seems to take a too harsh view of the accusers' lot; it is true they faced a penalty for abandoning an instituted accusation, but they were allowed to request a formal *abolitio*.

The rest of the chapters are devoted to the types of legally criminalized behaviour: theft and unlawful damage to person, honour and property, originally treated as private wrongs; then electoral corruption, extortion, treason, sexual misconduct, violence, murder and magic. The social context of crime and its treatment is one important subtheme. Harries suggests the civil penal processes were useless if the offenders had no means to pay, and that the magistrates' policing powers sufficed to deal with most common criminals. The legal treatment of offenders is set against the social attitudes, for example, calls for retribution in the case of thieves (for more popular ideas, Harries might have researched the curse tablets), and the other views and ways of life the law sought to counter – adultery is a fine example. Moreover, the definition of crime and criminal, notably treason's dangerous lack of it, figure prominently in the book. There is a useful discussion of the social process of labelling individuals or groups as deviant, making the likes of Apuleius and the Christians ripe targets for criminal accusation. The consensus of opinion about the criminal easily led to mob justice, and even in public courts, the process was largely about the accused's character. Harries stresses the law itself was open to forensic debate, and the judges applying it were sensitive to extra-legal considerations.

The central argument of Harries' book is that the development of Roman law of crime and punishment was not only dictated by the emperors and the jurists, but also influenced by the social values and the court practice (a similar argument is advanced by C. Humfress, *Orthodoxy and the Courts in Late Antiquity*, Oxford 2007). I believe no one would deny that the demands the litigants made on the courts, and their rhetorical elaboration by the advocates, were constantly pushing the law and its interpretation. But one may ask if it was their purpose to create or change the law by means of litigation (as happens today in common-law systems)? It seems that any influence the Roman litigants and advocates had on the legal system was an accidental by-product of their pursuits of immediate personal interest in courts (not to mention the limited role of precedent in Roman law). However, it is certainly worth exploring how the criminalization of offences and the harshening of penalties were driven by the victims seeking

revenge, advocates twisting the rules, and the judges battling crime. Although the law came about piecemeal, and – as Harries points out – not without the heavy influence of the elite rivalry, it defined, together with the relatively autonomous if traditionalist body of legal knowledge maintained by the jurists, the legal standard for the treatment of offenders.

Olivia Robinson's book *Penal Practice and Penal Policy in Ancient Rome* indeed suggests that the treatment of criminal offenders, conditioned by the legal rules and guided by the philosophical theories of punishment, remained surprisingly constant from the Late Republic to the Late Empire. Robinson points out that in all societies, the rules are occasionally perverted by politics, venality and ignorance, and Rome is certainly not an exception. But the differentiation of policy and practice in the book's title does not refer as much to a systematic exploration of the gap between the two as to an in-depth examination of the penal practice in order to find out its governing principles. But Robinson is not after the rules of law but continuity and change in the Roman attitudes to crime and its treatment as revealed by a close examination of six "famous" cases, or groups of cases, the Roman authors found worthy of reflection (trials of Jesus and Apuleius are excluded). Within those cases, the reader is given an adequate – if at times traditional – introduction to the history of crimes, procedures and punishments that one might expect of a more systematic study, which "the doyenne of Roman criminal law" (Harries' expression) has already done in *The Roman Criminal Law* of 1995.

The first six chapters of the book are devoted to the case-studies set out in chronological order: 1. the Bacchanalian affair of 186 BC; 2. the accusation of Sex. Roscius for parricide in 80 BC; 3. the treason trial of Cn. Calpurnius Piso in AD 20; 4. four trials for extortion before the Senate (early 2nd century); 5. the prosecutions of Christians (from 2nd to 4th century AD), and 6. the trials for treason and magic in the fourth century AD. The suppression of the cult of Bacchus undertaken by the Romans in Italy provides an excellent starting-point. A competing foreign cult reached Rome without state sanction, and was celebrated by male and female initiates in secret nocturnal rituals. According to Livy, rumours began to circulate about wine, feasting, promiscuous sex and rape – what was particularly shocking – of young men; then of false witnesses, forged seals and wills, followed by violence, murder and poisoning (nothing short of parricide). When the matter was brought to the consul's attention by a prostitute's testimony, the Senate charged the magistrates with hunting down the members of this "conspiracy" (*coniuratio*) and punishing those guilty of the alleged offenses. Robinson suggests the offences picked up by Livy (many of which were by his time "crimes" subject to trial before the standing jury courts) were the Senate's excuse for suppressing the alien if popular cult, and for regulating it for the future. A threat to both public and private security, the cult's repression was more a political than legal affair.

The treatment of the Bacchantes seems as harsh as extraordinary: Livy reports 7,000 were put to death, apparently without regard for due process, citizenship, or rank. But Robinson's book shows death and suffering were common features of the Roman landscape of punishment. Even in regard to citizens, the Roman tradition prescribed beating, drowning, suspending, burning, and strangling to death; the early emperors introduced aggravated methods of crucifixion, burning at the stake, and condemnation to the wild beasts, and the later ones added such as mutilation, amputation and impalement. In practice, however, citizens accused of capital offences were allowed in Republican times to flee into voluntary exile, making the death penalty extremely rare in practice (though Robinson accepts that ordinary criminals, slaves, foreigners and citizens of low station, may have been summarily flogged and executed

by the magistrates; technically a matter of *coercitio*). Under the Empire, exile – with or without the loss of citizenship – was regularly inflicted on elite offenders instead of the humiliation and pain in store for the ordinary people.

An important aspect of the book is the legal and philosophical motives for punishment, which in Rome ranged from the reformation of the offender to the safety in removing him from society, and to deterring others by his example; Robinson is certainly right in stressing the primacy of the latter purpose, driven home by the public spectacle of punishment. Roman law and tradition called for penalties fitting the crime, the criminal, and the degree of his guilt with a tilt towards clemency, but there were also proponents of stoic punishment of offenders. The growth of the emperor's authority increased the zeal of criminal repression; a late chapter is devoted to the penal policies endorsed by the emperor Justinian and his legislation. Christianity was a mixed blessing from the offender's point of view. As Robinson argues in the concluding chapter, equality in punishment was not possible in a society at ease with slavery. Some humanity was introduced to the treatment of ordinary criminals through improvement of prison conditions (and the branding of their faces was forbidden by Constantine), but less and less regard was paid to the demands by the nobles for humane treatment. It is interesting to note the tendency in late Roman society, living with the status distinctions, was to assimilate offenders in low rather than high status treatment (compare with J. Q. Whitman: *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*, Oxford 2003).

The great advantage of the book is that all the trials are superbly placed in the historical context with many quotations from Roman sources. And Robinson makes a good case for arguing that notwithstanding the Bacchanalian affair, the cases show a remarkable degree of respect for the rule of law and due process, including – perhaps surprisingly – the treason cases and the trials of Christians, even if the evidence comes from hostile sources. The problem is, as the author admits, that the cases chosen are not a representative sample of the "daily diet of courts". Not only are the offences rather exceptional, but also the accused are mostly high-status people, members of a very small and privileged minority. This is mainly the fault of sources, which speak mostly of the ideas and experiences of the ruling classes, though many of the Bacchants and the Christians were ordinary people. If account is taken only of legal procedures and penalties, and extra-legal practices are overlooked, it undoubtedly seems that "taking the legal route to deal with crime" and "expecting the procedures of the courts to settle major disputes" were the norm in the Roman Empire. In all, Harries and Robinson provide not so much competing but complementary histories of crime and punishment in ancient Rome. Either one of them is highly rewarding, but the student is even better off reading both books.

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DEREK ROEBUCK – BRUNO DE LOYNES DE FUMICHON: *Roman Arbitration*. Holo Books: The Arbitration Press, Oxford 2004. ISBN 0-9537730-3-5. XII, 283 pp. GBP 40.

*Roman Arbitration* is a sequel to Derek Roebuck's *Ancient Greek Arbitration* (Oxford 2001), also published by Holo Books. This is a very timely and promising book for anyone interested in ancient methods of resolving disputes, from students of arbitration to those of Roman law and history. It has been co-authored with French legal historian Bruno de Loynes de Fumichon