

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.

Janne Pölonen

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

who wrote his doctoral dissertation on Roman arbitration *ex compromisso* (Université Panthéon-Assas 2002), so the book draws on both the common and the civil law world of learning and experience. With the advent of Roman law and society histories, there is a growing interest in the practical side of litigation and dispute resolution but there has been no comprehensive treatment of Roman arbitration in English on the market. The topic has been covered in other languages, but mostly from a normative Roman law perspective. The authors seek to "describe" arbitration and other dispute resolution practices involving third parties over a period 1000 years, from the times of the Twelve Tables (450 BC) to the Arab conquest of Egypt (AD 640), within the vast territories that came under the Roman rule.

The reader is made acutely aware of the fact that the ways of resolving disputes, and the role played in it by Roman law, may have varied greatly over time and space (p. X). Although all kinds of arbitration attested inside the Roman world are considered "Roman" and included in the study (p. 39), "the distinctive characteristic of Roman arbitration was the ubiquitous availability of the administrative processes to help the arbitrants" (p. 12). The book commences with a dense description of a case of arbitration from the Roman Egypt, documented in the archive of Dioscorus and dated to AD 537 (Prologue: pp. 1–10). It shows how the Greek-speaking citizens of that province had adapted their local ways to the Roman way, by making use of the private arbitration agreement (*compromissum*) protected by the Roman law.

What counts as arbitration is discussed in the chapter "Definition, Method and Language" (pp. 11–21). The adjudicative authority the parties accord to the third party normally distinguishes arbitration from mediation, in which the third party merely helps the opponents to reach settlement. This holds true of Roman arbitration. However, the Roman arbiters also steered the parties toward amicable settlement, and sought, at least, to reconcile them with a mutually acceptable decision. The difference with litigation is that the ordinary Roman judge (*iudex*) was assigned the task of adjudication by the public magistrate (*magistratus*) instead of the private parties. Like the private arbiter, or mediator, however, the judge was not a professional adjudicator, a state officer trained in law, until post-classical times (p. 15). Moreover, their decisions (like private settlements and arbitrations) had to be enforced by the administrative orders of the magistrate. Students used to the idea of Roman litigation perhaps find it odd that the Roman state did not, despite the increased formalism and publicity of the Roman legal process, provide "anything which could be accurately described as a court for civil claims" (p. 12, 195). But in terms of modern categories, the *iudex* seems more like "arbitrator" than a "judge", and was often called to arbitrate.

The authors include Roman practices ranging from negotiation and mediation to arbitration in their study, and instead of forcing those practices into modern categories, they enable the readers to make up their own minds by quoting the sources in translation. In order to avoid confusion between ancient and modern ideas of mediators, arbitrators and judges, key terms like *iudex* and *arbiter*, which both stand for some kind of adjudicator, are explained and kept consistently in Latin. The "sources" are introduced in their own chapter (pp. 38–45), and the original texts (except Greek) are given in separate appendices for the "Legal Sources before Justinian" (pp. 207–11); "Justinian's *Corpus Iuris Civilis*" (pp. 212–33); "Literary Sources" (pp. 234–42); "Architecture and Surveying Texts" (pp. 243–4); and "Epigraphical Sources" (pp. 245–9). The system of reference to the originals, however, is not always as user-friendly as the authors would like it to be (in order to read the Digest text 9.1 cited on p. 16 one has to consult the contents on p. viii to learn where chapter 9 starts, seek the first quotation of that

chapter on p. 136 and the n. 1 for the actual Digest *locus* 4, 8, 13, 2, then search appendix B and spot the right text on p. 215).

The description begins with the most ancient and (probably at all times) the most common type of arbitration in Roman society, an entirely "private process whereby the parties ask a third party to help them solve their differences" (p. 13). The Romans called such an informally addressed third party *iudex*, *arbiter* or *disceptator*. This mutually trusted person could be a friend, a neighbour, an expert, a patron, a landlord, even one of the parties to the dispute, and his task ranged from mediation to assessment and adjudication. His decision rested not on the power of the public magistrate but on the respect the parties had, in a social context, for the authority (*auctoritas*), advice (*consilium*) and good faith (*fides*) of the person chosen. The arbiter was expected to decide objectively like any "good man". Hence the name for the whole chapter dealing with informal "Arbitration by *Bonus Vir*" (pp. 46–66), the universal type of arbitration found in most human societies. In ancient Rome, its peculiar feature was that "the law required the arbitrator to live up to its standards of honesty" (p. 46). But there was no action against the arbiter or his award. Since the late Republic, in case the arbitration by *bonus vir* was material to a formal contractual relationship, an unjust decision could be corrected by raising a *bonae fidei iudicium* against the other party concerning the particular contract, e.g., of partnership.

The informal private arbitration by *bonus vir* preceded, but was by no means superseded by, the public arbitration of the state-appointed third party that had emerged by the time of the twelve tables (450 BC). Accordingly, the chapter devoted to "Arbitration by *Judex*" (p. 67–93) studies the part played by the Roman private judge in legal procedures from the earliest *legis actio sacramento* to the formulary process that emerged from the second century BC onwards. During the preliminary hearings (*in iure*) the magistrate determined the legal issues and the scope of award, and the parties publicly agreed to submit their dispute on those terms to the *iudex* or *arbiter* chosen from the official list (*album iudicium*). The trial took place before the private judge (*apud iudicem*), and once the "litigation" was terminated by his sentence, the interested party could proceed with enforcement authorised by the magistrate. It seems that the third party was called *iudex* if he was appointed to adjudicate severely between conflicting legal claims, and *arbiter* if he was asked to adjudicate with discretion according to what is good and fair; they also did much partition and assessment, even mediation. Nothing is said, however, of the later *cognitio* procedure, in which the magistrate acting as *iudex* took charge of the adjudication (though he might still delegate this task to a private judge) and enforcement, except that there was allowance for resort to a bishop's arbitration.

In the history of Roman arbitration, the public arbitration by *iudex arbiterve* was followed in the second century BC by the emergence of private arbitration by the formal agreement of parties (*compromissum*), guarded by the mutual promise of a penalty for non-compliance, to abide by the award of the third party entirely of their own choosing. The difference with the informal private arbitration by *bonus vir* was that the magistrate protected the parties' contract to submit to the arbitration, and compelled the arbiter *ex compromisso*, once he had undertaken the task of arbitration (*receptum arbitri*), to pronounce the award. The parties were obliged to obey his decision, if they did not want to incur the penalty, even if it was unfair. The magistrate protected the parties, however, since the last century BC, by action/defence against fraud (*actio/exceptio doli*) on part of the arbiter, and the same standard of honesty was required of the parties by a *clausula doli* added to the *compromissum*. Unlike in the case of the *res iudicata* by a private judge, either party could seek another decision on the same matter if they were

prepared to pay the penalty. This is because the magistrate did not enforce, until Late Antiquity, the arbiter's award but only the penalty of non-compliance promised in the *compromissum*.

The arbitration *ex compromisso* is the only type of private arbitration of legal interest to the Roman jurists, and thus also lawyers and legal historians of more recent times have often thought it was the most important, if not the only, type of private arbitration. The authors rightly protest that the informal arbitration by *bonus vir* may have been the most common form (pp. 12–3), and insist that theirs is not a traditional legal analysis of Roman arbitration (p. 38). In addition to the official arbitration by *iudex*, however, no less than five chapters, about one half of the book, are devoted to a rather systematic (and at times repetitive) textbook account of the legally recognized "Arbitration *ex compromisso*: Introduction" (pp. 94–113); "The Arbitration Agreement" (pp. 114–34); "The Appointment of Arbitrators" (pp. 135–52); "The Hearing" (pp. 153–77); and "The Award and its Enforcement" (pp. 178–92). This scheme compromises the description of practice, but enriches the book with a good deal of the Roman law of arbitration.

In all, the authors succeed in their goal of providing plentiful primary sources. However, the evidence is presented with view to the arbiters and the legal effects of their appointment and awards, so the description tends to tell us more about the role played by the third parties in Roman arbitration than about the role played by Roman arbitration in the resolution of disputes. This is not to say that the book is (including the late John Barton's comments reprinted in the footnotes) not extremely rich in observation and insight, usefully brought together in the concluding chapter (pp. 193–206). The book profits from the authors' knowledge of dispute resolution in other societies, and the frequent comparison of Roman and modern arbitration. The bibliography (pp. 254–69) alone is worth the visit because it very extensively covers the literature from the medieval treatises to the modern scholarship on Roman law and history, though very few of the works are cited, let alone discussed. While readers interested in the historical debate and the current state of research on Roman arbitration will have to look elsewhere, many others are undoubtedly happy with the decision to put aside the "peripheral controversies".

Janne Pölönen

LUCIA A. SCATOZZA HÖRICH: *Pithecosa. Materiali votivi da Monte Vico e dall'area di Santa Restituta*. Corpus delle stipi votive in Italia 20. Archaeologica 147. Giorgio Bretschneider Editore, Roma 2007. ISBN 978-88-7689-225-7, ISSN 0391-9293. 116 pp. 28 tavv. EUR 95.

Procede con ritmo sicuro e regolare la pubblicazione dell'importante serie del Corpus delle stipi votive che la terra Ausonia ci ha restituito. Nel presente volume si tratta di un caso di grande importanza. Pithecosa era un nodo di scambi importante e meta in Occidente delle rotte mediterranee in cui si incrociavano elementi greci e orientali; a buon diritto una polis che fungeva da intermediaria importantissima della cultura ellenica in Italia. La straordinaria importanza dei materiali messi insieme nel volume aumenta con il fatto che tra di essi si trovano stipi di alta età arcaica, dal VII secolo in poi.

L'impianto del volume è sistematico. Nel catalogo i materiali vengono presentati secondo i consueti criteri di classificazione (busti e teste femminili, maschere, statue, terrecotte,