The Impact of Justice on the Roman Empire

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Edited by

Olivier Hekster
Koenraad Verboven

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CHAPTER 1

Introduction

Koenraad Verboven and Olivier Hekster

> esse aliquam in terris gentem quae sua impensa, suo labore ac periculo bella gerat pro libertate aliorum, nec hoc finitimis aut propinquae vicinitatis hominibus aut terris continentibus iunctis praestet, sed maria traiciat, ne quod toto orbe terrarum iniustum imperium sit, ubique ius fas lex potentissima sint
>
> There is a people on earth that wages wars for the freedom of others, at its own expense, its own toils and risk—and stands firm not just for those at its borders, or peoples in its near vicinity, or those joint by connecting lands, but crosses the seas so that there would be no unjust rule in the world and justice, and divine and human law would everywhere prevail.
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> Livy, 33,33

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For Romans, justice was the value that most legitimised their right to rule other peoples. Internally, it was a leading political principle that justified the power entrusted to emperors and senatorial, equestrian, and decurional elites. This seems paradoxical in modern eyes. The violence and brutality with which Rome conquered its empire and subdued the nations in it was on a scale rarely witnessed before.[1] Its rule relied on structural violence towards slaves, lower class, and conquered people, and on massive inequality between differ-

1 C.B. Champion, 'Conquest, liberation, protectionism, or enslavement? Mid-Republican Rome from a Greek perspective', in A. Ñaco del Hoyo and F.L. Sánchez (eds.), *War, Warlords and Interstate Relations in the Ancient Mediterranean* (Leiden, Boston 2018), 254–265; A.M. Eckstein, *Mediterranean Anarchy, Interstate War, and the Rise of Rome* (Berkeley 2009); S.P. Mattern, *Rome and the Enemy. Imperial Strategy in the Principate* (Berkeley, London 2002); C.A. Barton, 'The price of peace in ancient Rome', in K.A. Raaflaub (ed.), *War and Peace in the Ancient World* (Oxford 2007), 245–255.

ent social groups. The empire was a monarchy dressed up as a Republic. Yet, it nonetheless addressed elites, city-dwellers, land-holders and peasants from widely different ethnic, cultural, and social backgrounds as stakeholders of a social order governed by law and justice. Remarkably, many genuinely believed they were. The 'rule of law' imposed by Rome was eventually—if not initially—accepted as legitimate by the vast majority the empire's inhabitants. During the first centuries of our era up to a quarter of the entire human race expected justice from Roman authorities or Roman backed local authorities and arranged their lives accordingly.[2]

The ways in which the notion and practice of justice impacted on the functioning of the Roman Empire formed the subject of the thirteenth workshop of the international network *Impact of Empire* (*Roman Empire, 200 BC–AD 476*), held at Ghent University from 21 to 24 June 2017. Inevitably, the writings of Roman jurists provide a great deal of the source basis for this project, but jurisprudence as such was not at the centre of the workshop or of this book. Neither is our project intended as a contribution to the history of philosophical ideas. Both during the workshop and in reworking the papers the emphasis has been on notions of justice and related workings and perceptions of legal systems within Roman society. We have avoided imposing modern notions on what is just or not on the ancient material. Instead we focus on what was considered just in various groups of Roman subjects, how these views were legitimated, shifted over time (or not), and how they affected policy making and political, administrative, and judicial practice.

Underlying many of the chapters in this book is the tension between the preconceptual values of *iustitia* and *aequitas* on the one hand and 'law'—in the sense of a body of legal regulations and of the practice of justice—on the other. Notions of justice and fairness not only shift through time. They are also tied to social realities in complex, sometimes self-contradictory, ways, to which laws and practical justice need to accommodate themselves. The role of Roman jurists, both inside and outside the imperial administration, was crucial in bridging this gap.

At the same time, however, law also constitutes a separate reality of binding texts and institutional practices. These texts and practices reflect not (only) developing notions of what is just and fair, combined with practical considerations on how to impose them on reality. They also reflect tangible political, social, and economic interests. Law is as much (if not more) a device to protect interests than it is to ensure the realisation of abstract notions of justice

2 C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (Berkeley 2000).

and fairness. It may not have been in the interest of slaves that they could be freely abused by their masters and suffer the harshest punishments imaginable when convicted of crimes for which senators and equestrians would merely have been exiled—it was in the interest of their masters and the society that privileged them. It may not have been in the interest of freedmen that they had to perform personal labours (*operae libertorum*) for their former masters—it was of their *patroni* and the society that privileged them.[3] It may not have been in the interest of women that they were barred as heirs of patrimonies exceeding the estimated value of 100,000 sesterces—it was in that of men and the society that privileged them (see Köstner in this volume).

This function of the law as 'protectress of interests' is more than an objective reality. Law is potentially a highly effective ideological construct to convince those who are subject to it that structural inequalities in wealth or power are for the common good, even if they are not good for everyone.[4] It is "a thing unavoidable, a necessary ingredient in the best of worlds."[5] Serving the common good means accepting that the private interests of some are better served than those of others. "Better, never means better for everyone … it always means worse for some".[6]

Notions, practice, and ideology of justice are the three strands that tie this book together. In the rest of this introduction, we briefly survey the common themes discussed by the different chapters, which also form the organisational structure of the volume: the emperor and justice; justice in a dispersed empire; differentiation of justice.

3 W. Waldstein, *Operae libertorum. Untersuchungen zur Dienstpflicht freigelassener Sklaven*, Forschungen zur antiken Sklaverei 19 (Stuttgart 1986); H. Mouritsen, *The Freedman in the Roman World* (Cambridge, New York 2011), 36–65; H. Mouritsen, 'Roman freedmen and the urban economy. Pompeii in the first century', in F. Senatore (ed.), *Pompei tra Sorrento e Sarno: Atti del terzo e quarto ciclo di conferenze di geologia, storia e archeologia, Pompei, gennaio 1999–maggio 2000* (Naples 2001), 1–27; K. Verboven, 'The freedman economy of Roman Italy', in S. Bell and T.R. Ramsby (eds.), *Free at last! The Impact of Freed Slaves on the Roman Empire* (London 2012), 88–109.

4 Admittedly, the relation between 'law' and 'ideology' is a complex one as law itself, through the work of jurisprudents, influences ideologies; see R. Cotterrell, *Law's Community. Legal Theory in Sociological Perspective* (Oxford 1997); A. Halpin, (2006). 'Ideology and law', *Journal of Political Ideologies* 11:2 (2006), 153–168.

5 Voltaire, *Candide. With Twenty-Six Illustrations by Paul Klee* (New York 1920), 18.

6 M.E. Atwood, *The Handmaid's Tale* (Toronto 1985), 222 (chapter 32).

1 The Emperor and Justice

The relation of the emperor to the law and to justice is one of the more central themes of this book. The emperor was guarantor of justice, source of statutory and precedent law, the highest judicial authority, and the ultimate enforcer of distributive and corrective justice. Emperors were judges who received petitions and issued rescripts on paper involving litigants who wanted a ruling on a legal point. Emperors also heard lawsuits or prosecutions themselves and issued verdicts (*decreta*). This was mostly but not exclusively on appeal. Fergus Millar famously summarized this as the petition-and-response model, showing how emperors were expected to be approachable by their subjects and guarantee justice.[7] Emperors were also legislators of general laws, holding extraordinary legislative powers from Augustus onwards, ultimately even allowing Ulpian to argue that *princeps legibus solutus est*.[8]

The ideological and practical importance of the Roman emperor as an administrator of justice is addressed in several of the chapters in this volume. It is at the core of the argument by Benoist and Gangloff who trace back the effectiveness of the law as a potential ideological force to the Ciceronian conception of *iustitia* as inherent to the *Res Publica*. In their view, this made 'imperial' justice not primarily a private virtue of the emperor—the subject of philosophical reflections—but a political virtue and principle of good imperial government—the subject of political practice. As such, the virtue of justice was inextricably bound up with other political virtues, such as *clementia*, *liberalitas*, or *pietas*. Noticeably, the virtue of justice was not very prominent on coins and Latin literature (more so in Greek literature) partly because it could be shown at work as a practice of government, but partly also because imperial imagery preferred to stress related virtues such as *clementia*.[9] Over time, especially under the Antonines, justice became a more central element in the construction of the 'good' emperor, and the opposition just Prince / unjust Prince continued to be a central focus in the Severan age. The opposition between justice as a virtue and as a practice, however, continued to produce ambiguities. An emperor could be just in his actions, but morally reprehensible in his

7 F.G.B. Millar, *The Emperor in the Roman World* (London 1992, 2nd ed.), esp. 465–477 on access to the emperor and 537–549 on petition and response, with K. Tuori, (2012), 'Greek tyrants and Severan emperors. Comparing the image', *Bulletin of the Institute of Classical Studies* 55 (2012), 111–119: 113–114.

8 *Dig*. 1.3.31 (cf. *Dig*. 32.23, Paulus). On the emperor as *lex animata* see J.-P. Coriat, *Le prince législateur* (Rome 1997), 657, 662, with 8–11 on emperors and legal integration.

9 Cf. O. Hekster, 'Imperial justice? The absence of images of Roman emperors in a legal role', (forthcoming).

private life. Thus, Benoist and Gangloff compare Galba and Severus, both of whom were praised for their sense of justice, but criticised for their severity bordering on cruelty. The rule of one may not have been in the private interests of some but it was in that of all who had private interest to protect. This explains the central role of 'justice' in Roman political culture and imperial ideology.

There were several ways to emphasise legislative and judicial practices that were prominent features of a ruling emperor's public *persona*. As Benoist and Gangloff demonstrate, coins and Latin literature were less prominently employed, but there were alternative ways in which emperors could be shown as legislators and supreme judges. Noticeably, this was done through inscriptions highlighting imperial interventions and by performing justice as judge and interpreter of legal cases. For the Severan age, these performances seem to have been actively broadcast through two works of the jurist Julius Paulus, as argued in Daalder's chapter. She studies thirty fragments in the *Digest* attributed to those two works on imperial judicial decisions. They contain more or less elaborate descriptions of twenty-nine court-cases presided over by Septimius Severus. Since Paul himself served as legal advisor to the emperor he had first-hand knowledge of the cases and provides a unique insight in imperial court proceedings. Daalder argues that Paul's collection was not intended as a legal collection of valid precedents, as scholars mostly believe, but rather highlight Severus as conforming to the model 'emperor-judge' found also in literary sources. The legal status of imperial judicial decisions in early third century was still undetermined. Jurists citing imperial rules rarely mention court decisions. About half of the judgments studied by Daalder concern highly specific cases. They would have been what Ulpian described *constitutiones personales*, without value as precedents but highly effective to represent Severus as the ideal 'emperor-judge'. Imperial decisions had force of law. Conversely, however, while the emperor was not himself bound by any law, it was deemed improper for him not to respect the law. How an emperor dealt with this ambivalence determined how he was perceived by the general population and the elite. This was especially apparent when the emperor himself sat as judge. Paul's collection shows Severus being accessible to litigants from different gender, age, and social background, actively intervening, consulting, and deliberating with his legal advisers on a variety of cases. He allowed his advisers to speak freely and listened in earnest, but showed also his own expert knowledge of the law and did not hesitate to deviate from the opinions expressed, especially to protect litigants against too strict an application of existing laws. Thus, Paul shows Severus as a *bonus princeps* in the same category as Hadrian, Antoninus Pius or Marcus Aurelius.

If good emperorship and justice were so intrinsically linked, the judicial actions of 'bad' emperors could be problematic. This tension is explored by Bono, who in his chapter focuses on the opposition between justice by legitimate emperors and perceived injustice by usurpers. This was a major point in late-antique political thinking. If tyrants were not legitimate, then neither were their legal decisions and verdicts. As a rule, therefore, usurpers' enactments were nullified as the victorious legitimate emperor restored the *status quo ante*. This, however, was neither possible or desirable for the usurper's private legal acts because it would inevitably result in social and economic disruption. Bono argues that this tension was ideologically resolved by construing the victorious legitimate emperor as the restorer of order and protector of the stability of the law. The construction of the victorious legitimate emperor is clearly reflected in the *constitutiones* collected in the legal *Codices*, which were as much part of imperial representation as *Panegyrics*, images on coins or legal collections like Paul's. The recognition of the force of law of decisions in compliance with previous law (i.e. not based on statutes of the usurper) was unproblematic. Yet even decisions based on the usurper's own statutes could be upheld by the victorious legitimate emperor and thereby receive legitimacy. More generally, as Bono shows, private legal acts performed under the usurper's rule were upheld because they expressed the free will of the participants. Formal requirements for legal documents, such as the mention of the consuls' names were waived if the deletion was the result of the *damnatio memoriae* of the usurper. Because the legitimate victor himself was the embodiment of justice and legality, his decision to uphold these acts itself made them legitimate.

Clearly, then, in Late Antiquity at least, emperors were seen as the living embodiment of justice and law itself. Consequently, Wibier argues in his chapter, studies of imperial justice have mostly focused on the emperor and his immediate circle or on the 'users' of the legal system, who sought justice through petitions. Instead, he looks at the 'socialisation through education' process of those at lower levels. Legal textbooks imbued their students with a particular world view and the place of the emperor as legislator and supreme judge. Wibier focuses on the *Fragments of Autun* and compares these to contemporaneous imperial Panegyrics from Autun to show how legal students in the late-third and early-fourth century approached and used legal textbooks to navigate existing power structures ('to play a political game') and thus improve their social and political status.

In the process, Wibier also shows how these legal textbooks were part of a change in discourse that made emperorship increasingly synonymous with embodying justice. In the work of Gaius, he shows, the ultimate source of law is still the *populus*. Imperial decisions had force of law only because emper-

ors were given that authority by the *populus* through a *lex imperii*. In general imperial decisions are only mentioned in passing. The later *Fragments of Autun* on the other hand, focus strongly on imperial decisions. These are elaborately commented upon as precedents that can be invoked and make much of the 'beneficent' nature of emperors and the 'gratitude' owed to them. The 'sovereignty' of the people was simply not an issue in this emperor-centric discours.

This imperial focus was already present in at least some second-century handbooks, as the *Fragmenta Dositheana* show. While Gaius' *Institutiones* seems to have been popular mainly in law schools, the *Fragmenta Dositheana* stems from a manuscript tradition of texts used in Latin teaching and thus addressed a wide non-specialist audience. Specialist juristic works from at least the time of Severus show a shift towards the more emperor-centric views. Wibier argues that this gradual shift is part of 'discursive practices' which themselves contributed to the creation of a new reality. The drivers behind this evolution, he argues, were teachers of rhetoric, such as Menander Rhetor who instructs his student on how to write emperor-friendly speeches by emphasizing (*inter alia*) the emperor's concern for justice. By delivering their speeches these rhetoricians hoped to gain materially, for instance by appointments for positions in the imperial bureaucracy. In the process they taught their students to think in an emperor-centric way.

2 Justice in a Dispersed Empire

Roman emperors may have been strongly linked to all aspects of justice at an ideological level, yet at the same time local laws and legal procedures determined the practice of justice in large parts of the Roman empire. Roman law was the law of the dominant polity, but it was not the only legal system that operated in the empire. Even decades after the promulgation of the *Constitutio Antoniniana* extended Roman citizenship and law to nearly all inhabitants in the empire such local practices remained in use. Yet, as Cortés-Copete notices at the beginning of his chapter, already in his *Oration on Rome* (seventy-five years before Caralla's *Constitutio*) Aelius Aristides' presents the Roman empire as a legally unified empire founded on justice. Cortés-Copete argues that the harmonization of central imperial and provincial local law, which is a central theme in Aristides' oration, reflects legal and judicial reforms promoted by Hadrian in the Greek cities.

That did not imply, however, that Hadrian aimed to replace local laws with imperial regulations. On the contrary, he appears to have strengthened local

authorities and local legal traditions by explicitly confirming cities' rights to follow their own laws. In some cases Hadrian acted as *nomothetes*, lawgiver. Thus, in Athens, he remodelled the city's laws on those of Draco, Solon and other illustrious men from Athens' days of glory. So, while Hadrian promoted legal diversity within the framework of the empire as a whole and under the *aegis* of the emperor, he actively intervened, as emperor, in local legislation, harmonising conflicting local laws and adapting them to the 'common laws' (*koinoi nomoi*) of the empire. One important result (linking this section of the volume to the previous one), was that the emperor emerged from the process as the ultimate source of law and judicial authority. Hadrian pursued this policy through his chancellery by sending letters containing instructions on how local laws and jurisdictions should implement the principles of 'common law'. Thus, his reign became a milestone in the evolution towards emperors being the sole legislators in a legally uniform empire.

Because of the sheer size and diversity of the empire, however, judicial institutions inevitably had to operate on different levels: local, provincial and central. Hurlet, in his chapter, focuses on the central role of justice and judiciary institutions at these different levels in the daily life of the empire's inhabitants. As he shows, there were two main principles which governed the system: subsidiarity and hierarchy. Local courts operated independently according to local law, but Roman law was the universal law of reference and higher courts overruled local ones. Cases of criminal law and financial disputes surpassing a fixed amount fell under the direct jurisdiction of the provincial governor, regardless of the civic status of the accused. It created what Hurlet calls a 'judicial consensus' that united 'the governors and the governed'. This 'judicial consensus', however, was subject to constant negotiation between local, provincial, and imperial powers. Wealthy and influential defendants and accused could circumvent local courts. As Hurlet notices, the less wealthy ones could not (one case of the differentiation of justice which is at the core of the last section of the volume). An undesirable effect was that provincial courts were flooded with appeals against local verdicts in addition to cases brought before the court *ab initio*. Since at least the Principate of Claudius appeals to the *princeps* had to pass the provincial governor first and appeals to the governor required a security deposit of 2500 *denarii*. Nevertheless, this system of subsidiarity and hierarchy remained flexible even on these points. Hurlet shows that it was more easily implemented in the eastern provincies, where local authorities had long been used to royal overlordship, than in the western provinces, in which local peoples had never been subjected to hierarchical institutions before. He suggests that the loss of Germania was ultimately caused by the failure to realise the 'judicial consensus' that formed the corner-stone of imperial success else-

where. This judicial consensus was not based on justice as a moral value, but on the self-interest of the parties concerned. In many cases this included the ability to use (or even abuse) the system to one's personal advantage. From the imperial perspective, justice and judicial practice were instruments of domination.

Ando, in his chapter, approaches the problem of central justice in a dispersed empire from a different angle. The question central to his argument is whether Roman magistrates would honour decisions of local courts that violated their notions of substantive justice if local rules of procedure had been carefully followed? Or were central Roman notions of substantive justice deemed sufficient ground to overrule local courts? This is linked to a tension between a concept of the legal system as inherently just, and concerns that too much attention to specific wordings could lead to a substantively unjust outcome.

Ando shows that there were demonstrable concerns about these tensions between procedural rectitude and substantive justice in nearly every reflection on the legal-historical change offered in Roman jurisprudential writings. These arguments developped, *inter alia*, via reflections on social change. Society changed, with as inevitable result that wordings of older *formulae* were no longer adequate. Early juridical considerations of this process concern issues of legal legitimacy, but by the Antonine period they lead to discussions of substantive justice. A similar development occurred in provincial law, whereby Roman governors' first concern was the technical justiciability of disputes between autonomous communities or individuals from communities with different legal systems. Even in Gaius' description of *ius civile* as opposed to *ius gentium* there is no formal presumption that *ius civile* was dictated by concerns for substantive justice. Likewise, Julian prescribed that governors should first use local written law, then customs and usage, then to what is closest to or implied by these, and only in the last instance Roman law. Concerns for substantive justice (*iustitia, humanitas, benignitas, aequitas* ...) were irrelevant. Nevertheless, as Ando notices, by the early-second century CE the practice of judging specific cases by standards of substantive justice begins to emerge. Again, then, there seems to be a chronological development toward a notion of justice that places substantive justice over procedural correctness. One central conclusion from this section of the volume as a whole, then, seems to be increasing centralisation of Roman notions of justice. This, at least, was a real impact of continuing empire.

The final chapter in this section discusses the tension between the practicalities of justice at the local level and the above-mentioned notion of central imperial justice. Like Cortés-Copete, Herz starts his chapter with Aelius

Aristides' portrayal of the Roman empire as a harmonious and legally unified empire. This portrayal, however, must have been substantially different from practicalities. Herz notes how most of policing and fighting unrest in the empire was 'delegated' to the local levels, and that, furthermore, these local levels were no homogeneous units. This lead to organisational difficulties. Problems must have been especially severe in areas with a low urbanisation level—since it is likely that security control there was rudimentary at best. There was, as Herz emphasises, a clear difference between the official claim to guarantee security, peace and justice for all and the practical possibilities to accomplish these goals. On the opposite, there is substantial evidence that outside of the larger Roman cities and their hinterlands there were areas that should better be characterised as effectively lawless. Rather than Aristides' imperial justice, local experience must have highlighted a high level of (social) inequality, with the vast majority of subjects fighting for survival at a daily basis. Conflicts were often solved through violence, with a state that could only guarantee public security and justice in a very limited part of its territory. The difference between Roman justice as embodied through the emperor, and subjects' experiences in the provinces of that imperial justice must often have been pronounced.

3 Justice for All?

Clearly, not all individuals in the empire experienced the same level of justice. In the chapters discussed above, differentiation in wealth and geographical differentiation were already signalled as factors that made substantial difference in what justice was bestowed. But difference of (social) status was also a structural feature of Roman law, pertaining to citizenship, gender, freedom, and to some extent freedmanship.

The first two chapters in this section place the ambiguous position of women in Roman law at the centre. Roman women were disadvantaged in many ways but also enjoyed full property rights and legal agency. In theory this was curtailed by the requirement for a male *tutor* to approve anything they did. In practice by the late Republic this guardianship had become a formality. When Augustus created the *ius trium/quattuor liberorum* the justification itself for the institution disappeared. Women who had given birth to three children (or four in the case of freedwomen) could apply for exemption of the requirement. Many did.

Still, women were not equal to men before the law. How did this observation relate to Ulpian's well-known statement that 'justice is the constant and unwavering determination to give to each his right' (*iustitia est constans et per-*

petua voluntas ius suum cuique tribuendi)?[10] Köstner, in her chapter, discusses this question by focusing on the role of women in Roman inheritance law, in particular the *lex Voconia*. The law forbade wealthy testators to appoint women as heirs. How did that accord with Roman notions of justice? Was the law perceived as unjust, or was Roman *iustitia* gender-specific? Significantly, Cicero (*Rep*. 3,17 (x)) notes the apparent injustice of the law, passed for the benefit of men (*utilitatis virorum gratia*), full of injustice towards women (*plena … iniuriae*). These words were echoed by Augustinus of Hippo (*Civ*. 3.21), yet the law was never abolished. Moreover, Köstner notes how Cicero's opinion will have been influenced by his personal position as father to a sole female heir. There is, she argues, a potential tension between perceiving justice as an all-encompassing virtue, and seeing it as an instrument for interpersonal relations. In the latter context, it would be easy to take *mos maiorum* as a guideline for justified actions—as conservative Roman men did. Consequently, one could argue that the 'new' independence and visibility of Roman women did not fit the proper *mores* and was therefore unjust. Any law curtailing that behaviour would by implication be just. Questions about gendered justice, Köstner argues, relate closely to questions about wether justice was deemed to be good for some*thing*, some*one*, or *every*one. In Rome, it was perceived as fully justified to see laws as a guideline for social interactions, with different sets of rule for men or women.

Pavón, in her chapter, focuses further on the less favourable status of women in Roman law. Jurists were well aware of this but did not consider it as unjust. It was, as also noted by Köstner, in accordance with the general position of women in Roman society and linked to the importance of *mos maiorum*, which was considered valuable in its own right. Additionally, the different treatment of women was defended by pointing at female physical and emotional 'weakness', which made women unsuited for leading positions and diminished their *dignitas*. Pavón traces these perceptions—still held by Papinian and Ulpian in the early third century CE—back to the debates on the repeal of the *lex Oppia sumptuaria* in 195 BCE. She furthermore discusses how a number of laws clearly put forward different norms for women, many of them linked to a general desire to curtail the sexual behaviour of respectable women, such as the Augustan marriage laws and laws against adultery, or the *SC Claudianum de contubernio*. Did women believe these laws to be just? There is little evidence at hand to answer this question, but Pavón notes the protests of Roman women against the *lex Oppia* and the exactions of the *triumviri* in 42 CE.

10 *Dig*. 1.1.10. Cf. Cic. *Inv*. 2.53.160; *Rep*. 3.11.18; *Leg*. 1.6.19; *Off*. 1.5.15.

Apparently, these women protesters felt unjustly treated and did not hesitate to take action. Pavón also interprets the self-declaration of women to be prostitutes as a protest against the restrictions imposed on 'respectable' women by the Augustan law on adultery. These are glimpses of female disagreement with Roman male justice. Conversely, Pavón notes evidence for women who used the discourse of female weakness to appeal to the protection of government officials, using the discourse to their advantage.

As these two chapters show, there is a sustained ambiguity in Roman society. Women were not allowed to fulfill public offices apart from some priesthoods but we do find them entering into contracts, acception obligations and imposing them on others, and we see them acting as patrimonial managers. In practice women were caught in a vicious circle. Because social and cultural considerations did not allow them to fulfil official duties and to participate in male circles, women's options in life were severely limited. Families were hardly inclined to invest in women studying law or rhetoric when they would never be able to practice these professions. Social and cultural reality *made* women more vulnerable to fraud, which in turn confirmed their *fragilitas* in the eyes of men. Roman law never aimed to reform this reality, causing it to get caught up in a dual logic. On the one hand, women could not be allowed to perform all legal actions because they were socially and culturally firmly set apart. On the other hand, the social and cultural discrimination they suffered had to be remedied because they did have legal agency in private affairs.

Women are only one example of the social variety that Roman law took into account. Slavery and freedmenship is another. The distinction between *honestiores* and *humiliores* (formalised only in the third century) yet anothter. Since the essence of distributive justice was to give each person his or her due, the diversity of social statuses implied that equality in law would be unjust in fact. So what a person's due was depended on gender and legal and social status.

This type of differentiation of justice was made highly visible in a much-discussed form of Roman justice: the 'display of cruelty'. Carucci, in the final chapter of this volume, highlights how justice must not only be done; it must also be seen to be done. As in most preindustrial societies, executions in the Roman world were carried out in public. But Roman culture was exceptional in embracing the principle that the form of punishment should reflect the nature of the crime. Moroever, in line with what we discussed above about social differentiation of justice, the social status of the perpetrator was much more developed Roman punishment culture than in most other historical societies we know of. This may be linked to the incorporation of executions in public games. The well-known use of criminals in the re-enactment of myths is a spectacular (although in practice probably exceptional) example of how

this works.[11] Carucci discusses unique north-African mosaics showing such displays. These may reflect border raiders by real 'barbarians' rather than executions of 'home-grown' criminals. But the practice is widely attested in literary and legal sources as well as in other iconographic sources. While it may not have been frequent outside major cities, it will have been a conspicuous reality to most inhabitants of the empire.

Those inhabitants themselves, as Carucci recognsises, were also on display. The seating arrangements in theatres, amphitheatres, circuses, and *odea* visually reproduced social order. Civic elites had seats of honour on the front benches, followed by male citizens, women, and slaves. In many cities respected associations had blocks of reserved seats.[12] Throwing a condemned criminal to the wild beasts or burning him alive was more than just 'thrilling' or 'fun to watch'. As argued by Carucci in this book, it symbolised the expulsion of the condemned from civilisation and human society, which itself was watching, neatly seated in a grand expression of social order. The same logic applied to condemned Christians. By refusing to acknowledge the state gods, the divine power (*numen*) of emperors, the strength of their protective *Genii* and the divinity of the *Divi* Christians knowingly placed themselves out of civilised society and forfeited the protection that came with it.

As gallows were a familiar feature of the monumental landscape around medieval and early modern towns and villages,[13] so in Roman times crosses with convicts dead or dying in agony would have been an unexceptional sight. Roman citizens were spared death on the cross, making it a mark of slaves and non-citizens. As a rule (although there were exceptions) convicted Roman citizens in the arena were swiftly executed with a blow of the sword rather than thrown *ad bestias* or burned alive. Over time the dichotomy *honestiores* ('the honourable' classes) versus *humiliores* (everyone else) superseded the distinction between citizens and non-citizens. But the principle never changed. *Honestiores* were generally spared the harshest or most shameful forms of punishments; *ingenui* were preferably not subjected to torture or whippings. The *cognitio extraordinaria* provided scope for exceptions, but these rather underscored the exceptional nature of the crime or the exceptional depravity of the

11 Cf. K.M. Coleman, 'Fatal charades. Roman executions staged as mythological enactments', *Journal of Roman Studies* 80 (1990), 44–73.

12 K. Verboven, 'Guilds and the organisation of urban populations during the Principate', in K. Verboven and C. Laes (eds.), *Work, Labour, and Professions in the Roman World* (Leiden, Boston 2017), 173–202: 189–190.

13 J. Coolen, 'Places of justice and awe. The topography of gibbets and gallows in medieval and early modern North-Western and Central Europe', *World Archaeology* 45:5 (2013), 762–779.

convict than infringe the principle of status-based differential punishments. Justice must not only be shown to be done. In Roman eyes it had also to be shown *to whom* it was done and in what way.[14]

4 Final Reflections

How effective was Roman justice? There is more than one answer to this question. Practising justice was (and still is) costly. It required time and resources that the imperial administration alone could not muster. The severity of punishments is equally (if not more so) an indication of the small chances of being caught or convicted. It has often been said that Roman cities had no police force. That is not entirely true. Local magistrates could use their *lictores* (perhaps also public slaves) to perform justice and small detachments of soldiers could and were called upon to perform police duties. But it is true that these quasi-police forces were wholly inadequate. The centrality of justice in imperial ideology and practice nevertheless argues against too bleak a view of the impact of law and justice on life and administration in the Roman empire. Even in a context of weak formal institutions, law and justice create a powerful cultural frame and a cognitive template that allowed the prevention and handling of conflicts in relatively peaceful ways. It legitimised interventions by public authorities and shaped expectations people had from them. Equally, perhaps even more, important is the effectiveness with which law and justice successfully integrated culturally and socially different groups with sometimes opposing interests into a single empire that in cultural terms outlasted even the political institutions that formed it. This book, we believe, will contribute to a better understanding of how this was possible.

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14 For an in depth treatment with numerous examples see J.-J. Aubert, 'A double standard in Roman criminal law?', in J.-J. Aubert and B. Sirks (eds.), *Speculum iuris. Roman Law as a Reflection of Social and Economic Life in Antiquity* (Ann Arbor 2002), 94–133.

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