

(documents are in an appendix), and admittedly this is a difficult choice for a book like this. Roman sources are immediate to those who understand them but mysterious to a beginner. The author avoids mystery by entrusting everything to his own powers of description, synthesis, and simplification. This approach distinguishes this book from virtually every other introductory book on Roman law. In places the approach works well. The chapters on the legal profession and legal education are clear and interesting. The chapter on sources for Roman law offers a common-sense division, 'technical' (for or by lawyers) and 'non-technical'; this is an improvement on the traditional division of 'legal' and 'non-legal', which tends to elide our evidence for law with the Romans' sources of law, with artificial results (e.g., Gaius regarded as a lesser source). The chapter on social control brings together diverse institutions of private law and shows their public function. This is novel, and a good way to encourage students to think broadly about the law without having to engage with the law itself too closely. Finally, the chapter on law in the provinces brings to the students' attention several of the basic problems affecting the administration of justice outside Italy. Here it is very welcome to see the author pointing up the discrepancies between legal and documentary sources.

On the other hand, the author's straight-and-simple narrative is often overly reassuring. Telling students repeatedly to ignore some difficulty or detail is a lesson they may learn for all time. Apologizing for the unfairness of Roman society makes the Romans seem less deserving of study. Assimilating Roman institutions to modern ones discourages deeper thinking. The author clearly does not want to confuse the students, but is this really the best approach? A gentle tour without too much confrontation? Other introductory books allow students to be confused for a short time. They give them difficult sources and difficult ideas. They then gently reduce the distance until the law, though still unfamiliar, is no longer confusing. This is really how it ought to be done.

The chapters on substantive law suffer the most. It is difficult to introduce the rules of Roman law without going into some of the smaller points and providing texts and fact-based illustrations. This is not simply a lawyer's love of detail: the Romans' achievement in law-making is only apparent in the deeper regions of the law. For example, the author compares the character of the old formal contract and the newer informal contract, and prefers the latter for its flexibility. But this is an old trap. The formal contract is not 'a type of contract' but 'a way of making a contract', and there were virtually no limits to what could be done with it. You could use it to create sale or hire; to secure insurance from your neighbour from damage by his property; to settle a case; to forgive all debts and real claims in a single transaction; to litigate on any foolish or outlandish wager. In comparison, the purpose-bound informal contract was a straitjacket. Another example: the Lex Aquilia. This delict allowed liability for harm that was less than intentional, and causation, which had never been a problem before, suddenly demanded expert attention. The jurists' efforts to mark off remote, unactionable harm are found in a series of famous and stimulating texts. Past students of Roman law remember the barber and the muleteers even when they have forgotten everything else. But in the five hundred words which the author of this book has given to the Lex Aquilia, none of this achievement is apparent. In its place is a potted statement ('The person doing the damage had only to exercise a "reasonable" level of care in protecting others' property from foreseeable harm to avoid a charge'), which is not even Roman law but *Palsgraf vs Long Island Railroad*. In short, students learning from this book may not understand why one studies Roman law, and this is something an introductory book should avoid, even when the students are reading the book reluctantly.

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J. E. GAUGHAN, *MURDER WAS NOT A CRIME: HOMICIDE AND POWER IN THE ROMAN REPUBLIC*. Austin: University of Texas Press, 2009. Pp. xviii + 194. ISBN 9780292721111 (bound); 9780290705676 (paper). £35.00/US\$50.00 (bound); US\$25.00 (paper).

In this monograph, based on her 1999 PhD thesis, Judy E. Gaughan aims to re-interpret Republican Roman legal institutions that are commonly associated with murder from 753 to 81 B.C. and proposes a new interpretation of the relationship between homicide and power. G. argues that murder was not

considered a crime because no law explicitly outlawed murder *per se*. The seven chapters are preceded by a list of abbreviations, while the endnotes, bibliography, and general index are provided at the end. Undergraduates, in particular, will appreciate the translation of all quotations in languages other than English.

In ch. 1 G. identifies the Lex Numae as a historical murder law in use during the Roman monarchical period. This law was then necessary, because, according to G., ‘the king’s power, based on the sanction of the gods, required the king to control the spilling of blood’ (22). After the expulsion of the kings, as G. suggests in ch. 2, the power over life and death, *vitalis potestas*, was ‘granted to all male Roman citizens when they became *patres*’ (27). No murder law existed, therefore, because it ‘might have restricted [...] the flexibility of this paternal right and in doing so could have jeopardized the stability of the republic’ (52). The remaining chapters of the book examine legislative means in connection with the prosecution and authorization of killings during the Roman Republic until 81 B.C. In ch. 3 G. argues that the high magistrate’s right to kill through *imperium* was limited by the creation of *provocatio*, which again, according to G., produced a ‘tension’ that ‘remained a defining element of the power of these high magistrates throughout the republic’ (66). Further, as G. highlights, the XII Tables incorporated no murder law. In ch. 4 G. looks at various violent acts such as dagger wielding (72–6), poisoning (77–84), and parricide (84–8) that were actionable in a public venue. These, G. emphasizes, were not considered ‘crimes’, because no murder as such was prosecuted, but, rather, only killings in these specific circumstances (88–9). In ch. 5 G. investigates legislative offices usually connected to murder. However, as G. argues, neither could the *quaestores parricidii* investigate independently and punish with death, nor were the *tresviri capitales* connected to ‘the authority to kill citizens’ (98). Yet, as G. highlights, the ‘government’ could kill under specific circumstances because the senators’ prime concern ‘was the protection of the *res publica* and not the punishment of the crime *per se*’ (101). Still, as G. argues in ch. 6, the inability to legalize or abolish the *senatus consultum ultimum* reflects the ‘tension’ described in the third chapter (124, 66). In contrast, the *hostis* declaration, so G. in ch. 7, empowered Roman magistrates to kill Roman citizens (127–8). Yet, the *lex Cornelia de sicariis et veneficiis* ‘is not quite a murder law’ (133), according to G., because no significant change in existing laws was made and the law ‘was not only or even primarily concerned with homicide’ but rather a declaration of ‘the restoration of order’ (134). Having made her case that no murder law existed in Republican Rome, G. claims in the very brief epilogue that the increase in public violence after 81 B.C. caused changes to Sulla’s law which finally facilitated its modification ‘into a murder law’ (141).

The book offers some interesting hypotheses concerning the rôle of homicide in Republican Rome. However, it is disappointing that important aspects raised in the introduction are not followed up in the book. Thus, while criticizing the ignorance of differences between Republican Roman Latin and modern English expressions for the terms murder and crime in her introduction (2–4), G. still employs these very words throughout the book in reference to Roman contexts (e.g., 66, 72, 111). How a law on ‘murder’ should be identified within a society that lacks a term for ‘murder’ is similarly not addressed. In addition, G. does not attempt to define what could have constituted a ‘crime’ in a Republican Roman context and, instead, relies on *Black’s Law Dictionary* (1990) for a modern definition (1, 67). Thus, by comparing descriptions of Republican Roman society with a twentieth-century understanding of criminal behaviour in this way, it is unsurprising that G. concludes that the Republican Romans ‘did not yet have a sense of the government as a state, that is, as an entity that could somehow be harmed by the act of one citizen killing another’ (140). Readers may also find the largely uncritical treatment of many sources problematic. This is especially true of legends, such as Livy’s version of P. Horatius’ killing of his sister, which is taken at face value to describe the rôle of the *duoviri perduellonis* in Archaic times (106–7). Because of this lack of distinction between mythical exempla and historical events, the difference between expected behaviour and actual conduct is not addressed and the value of these mythical stories in particular within the society in which they were shaped and told is left unexplored. Despite these difficulties, however, the book raises noteworthy questions and will certainly stimulate discussion.

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