

## BOOK REVIEWS

Leonhard Schumacher, *Stellung des Sklaven im Sakralrecht* (Forschungen zur antiken Sklaverei, Beiheft 3, VI; *Corpus d. röm. Rechtsq.* Teil VI), Stuttgart: Franz Steiner Verlag, 2006. XXIII + 124 pp. ISBN-13: 978-3-515-08977-7.

The book under review is the sixth volume of the *Corpus der Römischen Rechtsquellen zur antiken Sklaverei* (CRRS), edited by T.J. Chiusi, J. Filip-Fröschl, and J.M. Rainer. The CRRS is one of the projects of the *Forschungen zur antiken Sklaverei* that was initiated in 1950 by Joseph Vogt, under the auspices of the Mainz Academy of Science and Literature. It will comprise 11 volumes, covering various areas of Roman law and discussing a range of statuses and groups of non-free persons.<sup>1</sup> Its great virtue is that it assembles and offers clear translations and interpretations of all extant legal (and occasionally other) sources relevant to ancient slavery. The present volume facilitates the study of slaves in Roman sacral law; as far as I know, this is the first study devoted to the subject.<sup>2</sup>

At the same time CRRS also draws attention to the main problem related to this subject, namely that despite their enormous social and economic importance, slaves do not feature in a specific section of Roman law, except for laws regulating manumission. In almost all other aspects of private law, slaves could be treated like sons (that is, as rational beings under the power of the *paterfamilias*) or animals (if viewed as mere property).<sup>3</sup> When dealing with the position of slaves in sacral law, the problem is even more complicated, and one may sympathize with Schumacher (henceforth S.) when he confesses to his doubts upon first undertaking the task (IX). The term 'sacral law' itself might be misleading. In legal sources there is almost no information on pagan sacral law, although the two Codes contain plenty of material on ecclesiastical law.

Consequently, the state of the available information affects the scope and orientation of the discussion, as it often does when dealing with antiquity, but it also largely dictates the themes discussed in this volume. Moreover, since slaves could not act freely in all the areas open to free persons, the investigation, as S. states, is limited to the areas in which rules set for slave-owners covered persons subject to their power (IX). The place of slaves in Roman sacral law can accordingly be inferred only by an examination of the decisions made by jurists in the cases of free persons (50). Nevertheless, slaves were capable of interacting with the gods, and S. succeeds in using the extant material to introduce the reader to the activity of slaves in some religious spheres, as well as to the positions and debates of Roman jurists on the dealings of slaves in these matters. S.'s book is thus a valuable tool for anyone interested in the religious activity of slaves and in the place of slavery in Roman legal writings.

The book consists of two parts. The first part (1-51), comprising nine chapters, is theoretical. In Chapter A ('Vorbemerkung'), S. links the theme to Ulpian's distinction between the *ius civile*, by which the slave was conceived of only in terms of property (*res Mancipi*), and *ius naturale*,

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<sup>1</sup> Of these, the *Prolegomena*, volumes I, VI, IX, and Chapter 6 of the last volume have already been published.

<sup>2</sup> Standard works on Roman law of slavery (such as W.W. Buckland, *The Roman Law of Slavery*, Cambridge 1908, and A. Watson, *Roman Slave Law*, Baltimore 1987) usually refer to sacral law very briefly. Similarly, the extensive study of F. Bömer, *Untersuchungen über die Religion der Sklaven in Griechenland und Rom*, especially volume I: *Die wichtigsten Kulte und Religionen in Rom und im lateinischen Westen*, 2<sup>nd</sup> ed., Wiesbaden 1981, has only two pages (184 and 229) touching on the position of slaves in sacral law.

<sup>3</sup> See O.F. Robinson, *The Sources of Roman Law: Problems and Methods for Ancient Historians*, London 1997, 117.

which recognized that all human beings were equal (3). S. underlines the double aspect of the slave as both *res* and *persona*, and notes that the 'person'-side of the slave emerged in private, criminal, and sacral law (4). This is an important observation, often dismissed by historians of slavery, who emphasise the commodity aspect of the slave or criticise the 'humanitarian' approach of the Mainz research group.<sup>4</sup> The legal aspects of slavery — in fact, the phenomenon of slavery itself — cannot be fully understood if we deny that the Romans (as well as the Greeks) viewed the slave as an 'animated property', to use Aristotle's words in *Politics* 1253b 33.<sup>5</sup>

Each of the next seven chapters is devoted to one area in the religious activity of slaves, for which relevant information can be found: vows; divination, imprecation, and magic; the functions of slaves in cult; oath; religious clubs; protection of slaves and restriction of ownership-rights; burial.<sup>6</sup> The ninth and concluding chapter is rather brief, and includes matters that belong to the preface.

The second part of the book (52-108) contains 109 relevant texts. These include legal sources (arranged chronologically, from the Twelve Tables to the *Novellae* of Justinian), but also epigraphic evidence, which in some cases led to a breakthrough in the study of law and slavery.<sup>7</sup> All texts are followed by a German translation and a brief commentary on textual problems and relevant literature. There is also an index of sources and an index of subject matter.

As S. notes, due to the nature of the evidence, the discussion is uneven. There is more material on vows, divination, and slaves' functions in religious associations than on the other aspects of religious activity, and there is more evidence from late antiquity and in Christian contexts than from earlier times. Still, all the texts set forth in this volume attest to an important fact: although dominated by their masters, slaves were quite active in the religious sphere. For instance, slaves (as well as sons) could not vow without the approval of the *paterfamilias* (6 and Text 34: D 50.12.2.1); but the fact that slaves *did* vow shows their full right to participate in the cults of the gods to whom they vowed. S. rightly observes that the fact that the master's agreement was required rendered the slave's action problematic. The obligation to the god did not extend to the owner, but once he had given his consent, the god could punish him, too, if the vow remained unfulfilled.

The discussion of slave's vows, as well as other religious activities, often demonstrates the narrow ground on which a study of the slave's place in sacral law rests. Only one text refers to a legal decision regarding slaves and vows; likewise, a single concise text mentions the slave in the context of divinations (8 and Text 36: *PS* 5.21.3-4 [=5.27.3-4 Liebs]). But what can we learn of the attitudes of free persons towards slaves from the fact that they were forbidden to consult oracles on their masters' welfare, and were both the subject and the object of magic and curses (8-9)? Again, S. makes some significant inferences concerning slaves' functions in cult, e.g., that the *aeditui*, mentioned in some texts, were generally non-free persons or freedmen (10), and that in

<sup>4</sup> The Mainz research group has unjustifiably garnered little interest in the non-German speaking scholarly world, but it has also been attacked, no less unjustifiably, for adopting a 'humanitarian' approach and for applying an empirical methodology. The chief and most influential critic was Moses Finley; see his *Ancient Slavery and Modern Ideology*, London 1980. For a more balanced view, see T.E.J. Wiedemann, 'Fifty Years of Research on Ancient Slavery: The Mainz Academy Project', *Slavery and Abolition* 21.3 (2001), 152-157.

<sup>5</sup> Robinson (above, n. 3), 118: 'The historian must hold these two approaches [i.e., that the slave is both a rational being and property] together in any consideration of slavery with legal implications'.

<sup>6</sup> Some of the themes discussed by S. in this volume also appear in other volumes of *CRRS* (e.g., the right of asylum, discussed in Chapter G-1, will also appear in Volume VII). Such repetitions are perhaps unavoidable in a project of this scope, but one may wonder what the difference between the texts used in the two volumes might be and whether a theme like this should be treated separately.

<sup>7</sup> For instance, one text of the Murecine archive, *Tabulae Pompeianae Sulpiciorum* 68 (Text no. 108 in this volume, and see 21), makes it clear that slaves too could use *stipulatio*. For a review of the *editio princeps* of these texts, see *SCI* 20 (2001), 225-245.

addition to their function as custodians of the temples, they were also responsible for the deposit of wills and other documents in the temples. S. also believes that the *ministri* (who were slaves) were the assistants of the *magistri* (who in Rome were mostly free — *ingenui* or freedmen) in the cult of the *Lares Compitales* (13-15). Yet the only legal evidence of slaves' functions in a cult deals with chariot races (15 and Text 1: *Lex XII tab.*, 10.7 [=FIRA<sup>2</sup> I, 68]); S.'s interpretation of the slave-charioteers as assistants of their masters in the cult, and hence as *ministri* in the term's expanded meaning, is somewhat strained, and accentuates his efforts to find a legal basis for descriptive evidence.

One of the most important issues touched upon in this book is the slave's business capacity. In the sphere of sacral law this meant the slave's competence to take an oath. The slave could be involved in transactions only in respect of his *peculium* or of his master's interests — and in both cases presumably only with the authorisation of the latter. Contrary to other scholars, S. believes that the slave could, with certain limitations, offer an oath within a judicial process arising out of business transactions (*iusiurandum necessarium*), and not only offer extra-judicial oaths (the *iusiurandum voluntarium* or *ex conventionione*), about which there seems to have been no dispute (20-22).<sup>8</sup> As for the slave's *peculium*, in view of the extensive religious activities reviewed by S., such as vows, dedications, and cult-associations, we may assume either that slave-owners were very generous in authorizing their slaves to use their *peculium*, or that authorisation was not necessarily required, at least in religious matters.

Overall, this volume will be of great help to anyone interested in slavery and sacral law who wishes to become familiar with the pertinent legal texts and problems. It will also be useful for German readers not in command of Greek and Latin. To my mind, the most important conclusion that can be drawn from this study is that although the position of slaves in sacral law can be discerned only through the regulations made for their masters, they were fairly active in the religious sphere, sometimes quite independently. References to the slave in sacral law show that although considered *res Mancipi*, when interacting with free persons and gods, the slave was treated as *persona*.

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Eric Csapo and Margaret C. Miller (eds.), *The Origins of Theatre in Ancient Greece and Beyond: From Ritual to Drama*, Cambridge: Cambridge University Press, 2007. 440 pp. ISBN-13: 978-0-521-836821.

Less than twenty years ago, J.J. Winkler and F.I. Zeitlin, the editors of an important collective volume on the extra-textual contexts of the Classical Athenian drama, changed the ancient proverb 'Nothing to do with Dionysos' into a provocatively interrogative form and adopted the question as their title. With this phrase the ancient Greeks expressed their surprise/regret over the insignificant presence of Dionysos in the theatrical performances and at the same time their awareness that his role should have been more prominent. Indeed, Winkler and Zeitlin believed that the role of the Dionysiac elements was more important than this proverb appears to convey. But the 'anterior, even utopian, moment in the development of theatre when what was performed in honor of the god would most logically have focused only on him' was given almost no room in their volume. They correctly admitted that the studies on this 'original' pre-Classical theatre were still 'woefully incomplete and often contestable'.

The heritage of the Cambridge ritualists' arbitrary reconstructions also made this kind of study questionable and rare in the subsequent decade. In the last years, however, this field has been

<sup>8</sup> S. links the question of the *iusiurandum necessarium* to the apparent competence of the slave to use *stipulatio* (see above, n. 7). For a different view, see W.W. Buckland (above, n. 2), 85, 214.