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978-0-521-82820-8 - Law and Crime in the Roman World

Jill Harries

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LAW AND CRIME IN THE ROMAN WORLD

What was crime in ancient Rome? Was it defined by law or social attitudes? How did damage to the individual differ from offences against the community as a whole? This book explores competing legal and extra-legal discourses in a number of areas, including theft, official malpractice, treason, sexual misconduct, crimes of violence, homicide, magic and perceptions of deviance. It argues that court practice was responsive to social change, despite the ingrained conservatism of the legal tradition, and that judges and litigants were in part responsible for the harsher operation of justice in Late Antiquity. Consideration is also given to how attitudes to crime were shaped not only by legal experts but also by the rhetorical education and practices of advocates, and by popular and even elite indifference to the finer points of law.

JILL HARRIES is Professor of Ancient History in the School of Classics at the University of St Andrews.

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Preface

Crime is a large topic. So too is law. The relationship of crime to law and of both to the society affected by harm done to it raises numerous issues for the lawyer, the historian and the sociologist. Crime is a moral and social, as well as a legal, problem. It therefore attracts the attention not only of legislators, the police, the courts and judges but also of modern film makers and novelists, drawn to an ever-present implied conflict between good and evil. The popularity of modern fiction on detectives in the ancient Roman world, Stephen Saylor's *Gordianus the Finder* and Lindsey Davis's *M. Didius Falco* to name but two, testifies to the abiding fascination of the figure of the detective, given extra appeal by his location in the exotic and safely distant antique world.

This book is about how the Romans thought about and discussed offences against the community, who formulated the rules and conventions about crime and how they worked. It is not therefore a manual of criminal law, and discussion is not confined to legal writers, although the ancient jurists, or legal interpreters, are extensively represented. Choice of themes has been, inevitably, selective. One is the impact of legal traditionalism on how crime was discussed and dealt with; a tension existed between legal convention and social values, which affected the ability of the discourse – though not of the judicial system – to adapt to changing perceptions of what crime was. A second is the role of litigants and court decisions under the Empire; this book suggests that sometimes they, rather than the emperors at the centre, were the motivators of changes, not always, from a modern perspective, for the better. And, thirdly, extra attention is given to perspectives on law and crime other than those of the legal specialists. Three writers are especially prominent: Quintilian, the former advocate and teacher of rhetoric under Domitian in the late first century AD; Aulus Gellius, the engaging antiquarian, from Antonine Rome; and Apuleius of Madauros in Africa, rhetor, novelist and alleged practitioner of the black arts.

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I am indebted to Peter Garnsey for suggesting the topic for this book and for his support both through and since the approval process. Progress in the early stages was much assisted by my hospitable colleagues in the Department of Classics at Emory University, Atlanta, Georgia, in particular Niall Slater, whose insistence on the importance of Apuleius for the topic was crucial in the shaping of the last part of this book. I am grateful to St Andrews University and the Institute of Comparative and International Studies at Emory for their award of the Bird Exchange Fellowship, which funded my semester at Emory; in particular I would like to thank the friends at Emory who made my stay there such a delight, Gordon and Wendy Newby of ICIS, and Mary Jo Duncanson, who gave so generously of her time in showing me the sights in Atlanta and the state of Georgia. For assistance in understanding Roman law and the thinking behind it, warm thanks are due to Alan Watson, whom I visited at Athens, Georgia, and to Olivia Robinson of Glasgow, the doyenne of Roman criminal law, whose perceptive and trenchant comments over the years have been invaluable. As ever, I have profited from the kindness and collegiality of all my colleagues in Classics in St Andrews; without them this book would not have been possible.