Comptes rendus


In this book, Liebs describes sixteen different cases, five of them civil cases and the other eleven criminal. They are in chronological order, ranging over possibly more than a thousand years: from the case of the Horatii which may date back to 670 BC to that of the trial of Priscillian before the emperor Maximus in 386 AD. They vary from relatively unknown cases on the one hand to household names for the initiated, like the famous defence of Sextus Roscius Amerinus that marked the beginning of Cicero's career, or even the uninitiated, like the trial of Jesus Christ. The book is a kind of sequel to two earlier publications by Beck, about Große Prozesse der römischen Antike and Große Prozesse im antiken Athen¹, a difference being of course that in this case, Liebs is the single author, whereas the other books contain contributions by different authors. Apart from a few pages on Cicero's defence of Sextus Roscius Amerinus², there are no overlaps with the earlier works.

The origin of this book lies in a course organised by Liebs on 'Bahnbrechende Prozesse im römischen Recht', within the framework of teaching on Legal History and Comparative Law. Consequently, Liebs' criterion for selecting these cases, as he states on p. 7, was whether they have contributed anything to the further development of Roman law, either civil or criminal, or illustrate this development.

All cases are treated in accordance with a fairly constant pattern: after a factual introduction of the case (called Die Geschichte or Das Geschehen) attention is usually paid to the textual tradition, sometimes to the historical background; of course the applicable law is stated and explained, as are the legal proceedings in the particular case itself. But Liebs does not allow the pattern to dictate the contents of the chapters; there are extra paragraphs on specific aspects of the case whenever the facts or the legal contents warrant it. In just over half the number of cases, a parallel is drawn with modern (German) private law or, occasionally, ancient social phenomena related with the case are compared to their counterparts in modern society.

Liebs has opted for endnotes (as was the case in the other two books), which makes it slightly more cumbersome for the reader to check the sources and literature; on the other hand, it makes all the cases eminently readable. The main sources are quoted in the notes, with a translation. Given the origin of the book, the treatment of the cases is necessarily aimed at students rather than at experts in Roman law. Students of both

² Treated also in Grosse Prozesse der römischen Antike (supra, note 1), by M. Fuhrmann in his contribution Zur Prozeßtaktik Ciceros, Die Mordanklagen gegen Sextus Roscius von Ameria und Cluentius Habitus, p. 48-61, esp. 54–57.
Roman law and Classical Philology or Ancient History will find this book an excellent introduction to these individual cases. Since the notes quote plenty of relevant literature, the book also becomes a stepping-stone for a more profound study of aspects of Roman civil and criminal law, or indeed Roman law in general. There are three indexes to complete it: of persons, places and things; there is no index of sources.

Of course, a review cannot take into account every single case treated, and to that extent it is impossible to do justice to the book as a whole. But we may take the five civil law cases (numbers 3, 4, 5, 7 and 14) as examples in order to give an impression of what the reader can expect.

In the third case, from about 100 BC and recorded by Valerius Maximus, Gaius Titinius had married Fannia, who did not have the best of reputations; eventually it came to a divorce and he accused her of adultery – which, if proven, would imply that he got to keep a considerable dowry. She claimed back the dowry before the praetor in Rome, who passed the case on to a iudex. Parties agreed on the famous general Gaius Marius, currently sixth time consul, but who apparently found the time to decide this case. He tried to reach an amicable agreement, but when Titinius would not cooperate, he fully granted Fannia's claim, though he also condemned her to paying a symbolic single sestertius because of her adultery. His reasoning was that Titinius had known whom he married, and had always intended to get his hands on the dowry. The basic rule to be found in Marius' reasoning, namely that someone cannot reproach another for a characteristic that he knew at the moment of making a contract with him – or her – is the lesson to be learned from this case; it was echoed centuries later in a text by the jurist Cervidius Scaevola: D. 24,3,47.

Case 4, handed down to us by Cicero in his De officiis and by Valerius Maximus, probably on Cicero's evidence, concerns a certain Titus Claudius Centumalus who had a house on the Mons Caelius that the augures ordered him to lower so that they could have an unobstructed view of the flight of the birds. Centumalus however did not do anything about the height of the house, but sold it – without mentioning the augures' order – to the unwitting Publius Calpurnius Lanarius. When Lanarius learned about the order, he brought the actio empti against Centumalus, and won. Judge in this case was Marcus Porcius Cato, grandson of the famous censor Cato, and father of Cato Uticensis, the adversary of Julius Caesar. The case is important for the development of liability for hidden defects.

Case 5 is the well-known causa Curiana. Its main point is the question whether the literal meaning of the words of a will take precedence over the testator's intentions, or rather the other way round. It is described by Cicero, who quotes it as an example of the superiority of rhetoric over word-mongering legal science. However, it is clear from Cicero's report that several eminent lawyers, Quintus Mucius Scaevola the augur among them, were in favour of the opinion that eventually carried the day. It was the famous orator Crassus who had pleaded the case of Curius, against Quintus Mucius Scaevola Pontifex (a nephew of the augur). Liebs points out that this case by no means

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3 A. Balbo, in his review of this book in Bryn Mawr Classical Reviews, 2008, mistakenly considers case 3 a penal and case 13 a civil case. The two are, admittedly, slightly puzzling for a non-lawyer: case 3 is about the reclaiming of a dowry, in which alleged adultery – a criminal offence – of the claimant is used as a counter-argument; case 13 is about vis privata having been used by a creditor in order to obtain what the debtor owed him.

4 Probably, as Liebs suggests, to be deducted from the dowry as Titinius paid it back; it is difficult to see how it would otherwise fit into a process per formulas.