

BOOK REVIEW

Prison, Punishment and Penance in Late Antiquity. By JULIA HILLNER. Cambridge: Cambridge University Press, 2015. Pp. xx + 422. Hardcover, \$115.00. ISBN 978-0-521-517521-5.

High hopes here: Julia Hillner's period, the overlap of "late" Roman Empire and "early" medieval, has received renewed attention in recent decades. Formerly, many classicists shunned their "late" Roman period, and medievalists their "early" medieval period—that is, for both groups a common period stretching roughly from Marcus Aurelius to Justinian. But in recent decades the two disciplines both hear each other and, more importantly, listen to each other. Julia Hillner has a significant publication record in this period; several of her articles have proven continually useful to me. *Bonis auspiciis?*

Per the jacket "This book traces the long-term genesis of the sixth-century Roman legal penalty of forced monastic penance," presumably in context of the last three words of the book's title "in Latin Antiquity".¹ An unfortunate definitional problem: how much of "long-term" does "Late Antiquity" contain? Clarity is needed since it affects judgment on Hillner's evidence and hence support of her theses.

Clarity there is not. "Conclusions" begins with "Over the two-hundred-years of late antiquity ..." (342). Appendix One, a chart of forced residence locales, starts with AD 325 (359), while the introduction to the appendices (354) gives a period of Constantine to Justinian. This in a book which includes "late antiquity" in its title, and which uses that phrase 36 times. No trivial concerns here. A.H.M. Jones' influential history of the period clearly begins with 284; Peter Brown overtly starts from mid second century AD.²

Hillner does deploy earlier evidence, but often her presentation lacks point.

¹ There is an Introduction, and ten chapters each of three parts, followed by Conclusions, Appendices, Bibliography and Index.

² Because of larger periodization problems, clarity becomes crucial in more limited time frames; Jacques Le Goff, *Must We Divide History Into Periods?*, trans. M. DeBevoise, New York, 2015. *Journal of Late Antiquity* 1.1 (Spring, 2008) contains articles by Marcone, James and Ando which explore at length these issues from a classicist perspective, some sixty pages of valuable perspectives.

For example, there is a long section (28–38) on Plato, utility unclear; the necessary points could fit into one page, liberating nine pages for other germane matters. She rightly emphasizes the role of the *paterfamilias* (152–158), but misses its fundamental nature probably deriving from at least as early as the regal period, thus Livy 1.57–9 with Alan Watson, *Rome of the XII Tables* (Princeton, 1975) 31–37, 167–168. She references an important point on *patria potestas* obliquely.³ What of “magic”? A major focus of punishment in the period, but the word appears only six times here, not in the index.⁴ Despite its obvious importance for the theme of punishment, the index has no entry for *lex* or *maiestas*, or any of the *maiestas* laws, which is more than a crucial oversight.⁵ “Treason” does appear in the index, a prime focus for punishment, but not *maiestas*, of which treason forms a part; thus it is *maiestas* which provides the basis for punishments in this period. Again, how can we understand those punishments, including but not limited to exile, without Saturninus’ law, Sulla’s and Augustus’ elaborations?⁶ Harsh reality conjoins *maiestas* and exile on into the sixth century AD and beyond.⁷

Far the most serious omission: the concept of delict, and this absence compromises much of the book. True, it belongs to “private” law. True it begins early with the *Lex Aquilia* (early third century BC). True also that much of the evidence appears before Hillner’s “period”, whatever that may be (*supra*). For example, Celsus praetor AD 106, Gaius fl. AD 150–80, Paul. fl. AD 193–225, Ulpian d.

³ Entry into a monastery terminated it (185 with note 158), but the note merely gives a reference to an article and none of the ancient sources therein. Branko Granić, “Die privatrechtliche Stellung der griechischen Mönche im V. und VI. Jahrhundert,” *Byzantische Zeitschrift* 30 (1930) 669–76 at 672–3. Some of those references are Just. *Cod* 1.3.54.5, and *Nov.* 123.41; the article gives Karl Zachariae von Lingenthal’s (1881) numbering 155.41.

⁴ There is much easily referenced contemporary work by Matthew Dickie, James Rives, and the reviewer.

⁵ The index of seven pages, with none of principal passages or *rerum et locorum*, to say the least renders the book almost unusable. For example, asceticism, an important theme with sixteen references in the text but no index entry.

⁶ R. A. Bauman *Crime and Punishment in Ancient Rome* (London 1996), Steven H. Rutledge, *Imperial Inquisitions* (London, 2001) 347 notes 8–9; Barbara Levick, “*Poena Legis Maiestatis*,” *Historia* 28 (1979) 358–79. Only Bauman appears in Hillner’s bibliography, but missing is his important *Impietas in Principem* (Munich, 1974) which has much to offer here.

⁷ Jill Harries, *Law and Crime in the Roman World* (Cambridge, 2007) 81–3 e.g. *CTh* 9.11.1 (388) *maiestatis*, 10.20.18 (436) *laesae maiestatis crimine*; twenty seven other examples of *maiestas* in book nine including 9.5 on the *L. Julia Maiestatis*; cf. *D.* 48.4.3.pr.3, 48.4.8.pr.1 which include *laesae*; two other examples in book 10. Pharr’s translation rightly renders the word as “treason” but I cannot tell if Hillner’s use of “treason” is informed by this given that *maiestas* the word is absent from her text.

AD 223. But its absence is unforgivable. The penal character of Roman delicts has long been established: they were both compensatory and punitive, in contrast to, e.g. the USA system where compensation lies with civil proceeding, punishment with criminal proceeding. The law of delicts extends throughout the four, fifth and sixth centuries AD on into Justinian's *Digest*. Near total absence of such considerations is not good; we need to trace how punishment got to where it was in late antiquity.⁸

A key concept also spans Hillner's period, however it be defined, namely the increasing stratification of the curial order (*decuriones*) into *honestiores* and *humiliores*. There is a brief and not inaccurate discussion (51, 61), and her index gives two additional references to the former, five to the latter. But she nowhere puts it into its historical context or indicates the enormous influence this classification has on punishment. She knows some crucial work such as Peter Garnsey's but, significantly, misses Geoffrey de Ste. Croix's *The Class Struggle in the Ancient Greek World* (London, 1981), which not only synthesizes much earlier work, but also takes the subject in an entirely new direction by pointing up the historical connection of punishment with socio-religious status as well as census status, the latter of benefit to relatives also (456–462).⁹

Einzelklärungen, when they appear at all, often do not satisfy. What of Paulus Tartareus, in Barb's evocative rendering "Hellfire Paul", the busy Grand Inquisitor who pops up seemingly everywhere like the proverbial bad denarius? Then there is the famous story of the arrest and punishment of Peter Valvomeres (15.7.4-5). What was the legal basis for Leontius' (*PLRE* 1 Flavius Leontius 22) punishment of him? As Prefect of Rome, the only appeal beyond him lay with the emperor, thus endowing him with something of a law-making function *de facto* second only to that of the emperor.¹⁰ Musurillo's is far from the best edition of the martyr acts (267); add Brent Shaw *Past & Present* 1993 on Perpetua. Overall

⁸ Of course Hillner knows the *Digest*; apart from her earlier writings, there are twenty references to "Digest" and 21 to "D.", a figure which does not include several references under one "D-word" Curiously, although she gives page references to Loeb translations for major authors (*infra*), a translation of the *Digest* is not sourced even though Alan Watson has produced a convenient and affordable one (Philadelphia, 1997). Incidentally, there is no apparent mention of Watson's enormously important writings anywhere in the book.

⁹ *P.Gen.*1 from Caracalla's reign, relatives of a low grade equestrian who has the emperor's ear should be treated respectfully. Punishment is in the eye of the scholarly beholder; hence Justinian's much discussed Nov. 146 on requiring the Jews to read their scriptures in Greek: punishment?

¹⁰ On crowd violence, Harries (above n. 7) 108-10.

there are too many typos; none will mislead but all will annoy, although the curious renaming of *PW* (xvi) most rankles this reviewer. Lastly, but by no means least, there is the inexplicable decision to give promiscuous page references to Loeb translations, employing a swollen listing of them (xiv)—understandable if from a classic translation or excellent edition. But for Horace's *Satires*, Plato, and Cicero's *Catilinarians*? Not so much.

What then of the *bonis auspiciis* which began this review? Not every omen means something (Homer, *Od.* 2.181-2, limited to birds). There are multiple issues, all betokening carelessness and haste. Some may clearly be assigned to one entity: author or referees or editors or production staff. Others to combinations of those entities.

Non-specialists will be mystified, so lacking is context both historical and legal. Specialists will be mystified, so lacking are close analyses of crucial concepts. All will feel confusion and annoyance at the higgledy-piggledy writing, documentation, and argumentation. The lengthy bibliography is useful, which, considering the book's price, must make it one of the most expensive bibliographies ever on a cost per page basis.

I cannot recommend purchase or perusal. It is an aberration. Avoid it.

C. ROBERT PHILLIPS III

Lehigh University, prof.robert.phillips@gmail.com