

PERCEPTIONS OF ROMAN JUSTICE

Paul J. du Plessis*

1. Introduction

The bulk of Laurens Winkel's publications focus on *aequitas*, whether in Roman legal thought, in the works of the sixteenth-century Dutch jurist, Hugo Grotius, or in the legal mechanisms developed by various nation states after the Second World War to enforce the restitution of property seized unlawfully in wartime. Given the focus of his scholarship, it seems fitting to contribute to his *Festschrift* a piece on Roman *aequitas*. In much of his scholarship, Laurens Winkel has attempted to show that *aequitas* was not merely an abstract ideal that existed solely in the "heaven of concepts" (to use a phrase coined by Rudolf von Jhering) inhabited by many scholars of Roman law. Rather, it was a living legal principle that had a demonstrable impact on Roman law and its application. To that end, this small contribution will not focus on Roman *aequitas* in the abstract, for this topic has been examined in vast tracts of scholarship, both old and new. It will attempt to sketch a perspective on Roman *aequitas* in practice, by investigating perceptions of *aequitas* in the application of Roman law in a municipal court at local level in the Roman Empire. In doing so, this piece represents a small contribution to the emergent field of "law and society" scholarship on Roman law and, more specifically, on experiences and perceptions of Roman justice in action.¹ Nowhere is this more visible than in the encounters between Christian missionaries and Roman officials as recounted in the New Testament.

¹ See generally Frier, B.W. Entry on "Law, Roman, Sociology of" in Eidinow, E.; Hornblower, S.; and Spawforth, A. eds. *The Oxford Classical Dictionary*, 4th ed. (Oxford: University Press, 2012), and also Pölonen, J. "The Case for a Sociology of Roman Law" in Freeman, M. ed. *Law and Sociology* [Current Legal Issues vol. 8] (Oxford: University Press, 2006), 398 – 408. A "law and society" approach to the study of Roman law does not merely involve explaining developments in Roman law with reference to socio-economic factors. This is merely the starting point. Rather, such a methodology attempts to situate Roman law in the ancient world using insights and research findings obtained from research into socio-economic factors affecting the Roman Empire. The basic premise of that research is that Roman law, as transmitted through the writings of the Roman jurists, is not wholly removed from the realities of the Roman Empire.

* FRHistS, Senior Lecturer in Civil Law and Legal History, University of Edinburgh.

Acts 16:12 – 40 recounts an episode during the reign of the Emperor Claudius, when Paul and Silas visited Philippi, a sizeable city in the Roman province of Macedonia, to pursue their missionary work.² Although not the capital of the province, it nevertheless had the status of a Roman *colonia*, which meant that it had certain legal privileges, most notably that Roman civil law had replaced its local law and that Roman legal procedure operated in its courts.³ The visit of Paul and Silas was marked by two events. Firstly, Paul and Silas met Lydia, the seller of purple dye from Thyatira, and converted her and her household to the Christian faith. In the second place, Paul and Silas had an unfortunate encounter with Roman municipal justice that, according to Luke (the author of this passage) saw them flogged, thrown into jail, then eventually released and asked to leave the city.⁴ The Acts, as a specific type of literature written for a Christian audience, cannot be seen as an objective factual account of the events in Philippi.⁵ In this respect, theological literature presents the same problems as Roman legal texts. Nevertheless, once we accept that the description of those events is not entirely fictional, it becomes possible to test this account against our knowledge of the Roman legal order in order to enhance our understanding, not only of Roman law, but also of the experience of Roman justice by those, both Roman citizens and *peregrini*, who were subject to it. To do so, we must first examine the cause of the visitors' encounter with Roman municipal justice:

[16] Factum est autem, euntibus nobis ad orationem, puellam quandam habentem spiritum pythonem obviare nobis, quae quaestum magnum praestabat dominis suis divinando. [17] Haec subsecuta Paulum et nos, clamabat dicens: Isti homines servi Dei excelsi sunt, qui annuntiant vobis viam salutis. [18] Hoc autem faciebat multis diebus. Dolens autem Paulus, et conversus, spiritui dixit: Praecipio tibi in nomine Jesu Christi, exire ab ea. Et exiit eadem hora. [19] Videntes autem domini ejus, quia exivit spes quaestus eorum, apprehendentes Paulum et Silam, perduxerunt in forum ad principes.⁶

- 2 Tajra, H.W. *The Trial of St. Paul – A Juridical Exegesis of the Second Half of the Acts of the Apostles* (Tübingen: Mohr, 1989) at 18.
- 3 Tajra (n. 2) at 4 – 7; Omerzu, H. *Der Prozeß des Paulus – Eine exegetische und rechtshistorische Untersuchung der Apostelgeschichte* (Berlin/New York: De Gruyter, 2002) at 120 – 123; Hooker, M. “Philippians” in Dunn, J.D.G. ed. *The Cambridge Companion to St. Paul* (Cambridge: University Press, 2003), 105 – 115 at 105; Rapske, B. *The Book of Acts in its First Century Setting – vol. 3 Paul in Custody* (Grand Rapids Mich.: Eerdmans, 1994) at 116. Sherwin-White, A.N. *Roman Society and Roman Law in the New Testament* (Oxford: Clarendon, 1963) at 74 observes that the “law” of the city of Philippi would have been enacted in a local municipal statute such as the ones preserved for *Urso* and *Irni*. As for the type of procedure that would have applied in these courts, a controversial matter, see Jones, A.H.M. *Studies in Roman Government and Law* (Oxford: Blackwell, 1960) at 79 – 80.
- 4 Tajra (n. 2) at 27 – 29.
- 5 Meeks, W.A. *The First Urban Christians – the Social World of the Apostle Paul*, 2nd ed. (New Haven/London: Yale University Press, 2003) at 26 for an overview of the debate surrounding the use of the Acts for the purposes of social history. See, also, Sherwin-White (n. 3) at 188 – 189 who observes that although the Acts belong to a specific literary genre, they can still be subjected to textual criticism and historical enquiry.
- 6 All Latin renditions of the Vulgate Bible are taken from: <http://www.sacred-texts.com/bib/vul/> (5 September 2012). For the original Greek, see <http://www.greekbible.com/> (5 September 2012).

[16] And it came to pass, as we went to prayer, a certain damsel possessed with a spirit of divination met us, which brought her masters much gain by soothsaying: [17] The same followed Paul and us, and cried, saying, These men are the servants of the most high God, which shew unto us the way of salvation. [18] And this did she many days. But Paul, being grieved, turned and said to the spirit, I command thee in the name of Jesus Christ to come out of her. And he came out the same hour. [19] And when her masters saw that the hope of their gains was gone, they caught Paul and Silas, and drew them into the marketplace unto the rulers.⁷

While staying in Philippi and going about their missionary work, Paul and Silas encountered a slave girl possessed by a “python spirit” who, owing to her special ability, made her owners a healthy profit through her activities.⁸ The slave girl began to follow the missionaries around and to shout out: “These men are the servants of the most high God, which shew unto us the way of salvation.” [King James translation] At first, Paul ignored the slave’s calls, and apparently continued to do so for a number of days but after a while he pitied her (*dolens*) and, turning to the slave, performed an exorcism by commanding the spirit to leave her. It promptly did so. When the owners of the slave girl realised that she had lost her ability to generate profit for them, they apprehended Paul and Silas and took them to the forum (*agora*) of the city in order to bring them before the chief municipal magistrates (the *duoviri/duumviri iure dicundo*).⁹

The final sentence of this passage (verse 19) has been the subject of much scrutiny. Traditionally, it has been seen as the start of a series of events in which Paul and Silas were submitted to harsh summary executive justice at the hands of the city magistrates of Philippi. The passage deserves closer attention:

[19] Videntes autem domini ejus, quia exivit spes quaestus eorum, apprehendentes Paulum et Silam, perduxerunt in forum ad principes.¹⁰

[19] And when her masters saw that the hope of their gains was gone, they caught Paul and Silas, and drew them into the marketplace unto the rulers ...¹¹

Although much has been made of the supposed violence implied in this text, it should not be overemphasised.¹² The procedure for summoning someone to a Roman court had long since been laid down in the Twelve Tables of c. 450 BCE:

7 All English texts of the King James Version of the Bible are taken from <http://www.kingjamesbibleonline.org/Acts-16-40/> (12 May 2013).

8 For a discussion of the association between the “python spirit” and the Roman god Apollo, see Laymon, C.M. ed. *The Interpreter’s Concise Commentary – Acts & Paul’s Letters* (Nashville: Abingdon Press, 1983) at 62. Omerzu (n. 3) at 139 observes that Luke seems to be the first author to have introduced the notion of financial loss in respect of the slave in relation to this episode.

9 Tajra (n. 2) at 10; Rapske (n. 3) at 123 – 124.

10 See n. 6 *supra*.

11 See n. 7 *supra*.

12 For an overview of the range of opinions in modern scholarly literature on the role of the mob in this episode, see Rapske (n. 3) at 121 – 123.

Tab.1.1 Si in ius vocat, ?ito?, ni it, antestamino; igitur <im> capito.¹³

If he (i.e., anyone) summons to a pre-trial, ?he (the defendant) is to go:? If he does not go, he (the plaintiff) is to call to witness; then he is to take him. [Crawford *et al.* translation]

Similarly, by the first century CE a summons was still a private process but had grown into a ritual, which could involve bringing the prospective defendant to court and the plaintiff's revealing the nature of the claim (as recorded in the Praetorian Edict) as recounted by the late-Republican/early-Augustan jurist Labeo in D. 2.13.1.1 (Ulpian. 4 Ed.).¹⁴ When verse 19 is read in the light of the procedure set out in these two texts, it seems highly likely that what is being described here is not an incident of mob violence, but merely the standard way of instituting a lawsuit in a Roman court. Paul and Silas were summoned to the municipal court that had its seat in the *agora* of the city.¹⁵ The presence of the crowd mentioned in the narrative can also be explained. Crowds played an important role in Roman court procedure, most notably as the *corona* that served to demonstrate the public nature of Roman justice, and we must therefore assume the presence in the local *agora* of many bystanders who were interested in the application of Roman justice.¹⁶

2. The accusation

What was the nature of the legal claim that the owners of the slave girl wished to bring against Paul and Silas?¹⁷ The answer to this is seemingly provided in verses 20 – 21:

[20] et offerentes eos magistratibus, dixerunt: Hi homines conturbant civitatem nostram, cum sint Judaei; [21] et annuntiant morem, quem non licet nobis suscipere neque facere, cum simus Romani.¹⁸

[20] And brought them to the magistrates, saying, These men, being Jews, do exceedingly trouble our city, [21] And teach customs, which are not lawful for us to receive, neither to observe, being Romans.¹⁹

The seeming disparity between the initial accusation (loss of financial gain) made by the owners of the slave and the legal complaint reported in verses 20 – 21 has provoked

13 Crawford, M.H. *et al.* *Roman Statutes* vol. II (London: Institute of Classical Studies, 1996) at 585.

14 D. 2.13.1.1 [Ulpian. 4 ad Ed.] Edere est etiam copiam describendi facere: vel in libello complecti et dare: vel dictare. eum quoque edere Labeo ait, qui producat adversarium suum ad album et demonstret quod dictaturus est vel id dicendo, quo uti velit. (Mommsen)

15 Omerzu (n. 3) at 141. See, for example, D. 2.5.2pr (Paul. 1 Ed.) which states that anyone summoned had to appear before a magistrate so that it could be established whether he had jurisdiction over them. A similar view is taken by Sherwin-White (n. 3) at 79, 82.

16 See Bablitz, L. *Actors and Audience in the Roman Courtroom* (London: Routledge, 2007) generally.

17 As to who the owners may have been (individuals or a corporation), see Rapske (n. 3) at 119 – 120 for a survey of the range of scholarly opinions. It is accepted that they were Roman citizens who must have been well known in the city.

18 See n. 6 *supra*.

19 See n. 7 *supra*.

much discussion.²⁰ Many scholars have raised the possibility that in this passage the author, Luke, attempted to show that the charges brought against Paul and Silas were fabricated.²¹ Given that there are a number of textual problems in the account of the accusations against Paul and Silas, it is perhaps best to look at these individually to assess their legal merit.

Let us take the issue of lost profit first. In verse 19, we are told that the reason why the owners of the slave girl took Paul and Silas to the *agora* and before the municipal magistrates was because the income-generating potential of the slave girl had depreciated as a result of Paul's exorcism. Using a counterfactual approach, it has to be asked what legal remedies were potentially available to the owners of the slave under Roman law. In order to answer this question, a few observations about the civic status of Philippi are required. The city was a *colonia*. This is legally significant, for it meant that Roman civil law applied there. According to Roman private law, three possible claims could be brought against Paul and Silas, namely *damnum iniuria datum* (wrongful damage to property), *iniuria* (insult) or *corruptio servi* (corruption of a slave). Before examining these in greater detail, we must establish whether it was possible to hear any of these in a municipal court such as that of Philippi. To ascertain this, we must look at some surviving records of Roman municipal laws. The *Lex Irnitana* placed a financial limit of 1000 *sesterces* on the size of a claim²² for a *municipium* (not a *colonia*). It is of course impossible to know what the municipal law of Philippi stated in this regard, especially since *municipia*, which retained some of their local laws, had fewer legal privileges than *coloniae*; but it remains an important consideration. Since we are told in the relevant passage that the slave girl's clairvoyance brought her owners a great deal of money, it may well be that the claim would have been for too large an amount to be entertained in a local municipal court, and that this may have had an impact on the eventual charges brought against Paul and Silas.

However, even if we assume that the three claims set out above fell within the jurisdiction of the municipal court, we have to ascertain whether they would have been available to the owners of the slave. Let us take wrongful damage to property first.²³ Damage to a slave (short of destruction) would have fallen under chapter 3 of this *lex*. In order to succeed in the statutory legal action flowing from this *lex*, a plaintiff had to show that he had suffered financial loss caused by the defendant's wrongful actions. Although there had been considerable juristic and Praetorian extension of the provisions of the *lex*, a plaintiff wishing to bring this action on the grounds of the loss of the slave's clairvoyance would have struggled to prove his case in the first century CE. The reasons for this are threefold. First, for a statutory action to succeed, the plaintiff had to show that the defendant had caused the loss through a physical act, which could be classified

20 Omerzu (n. 3) at 124 – 125.

21 Laymon (n. 8) at 63.

22 González, J. "The *Lex Irnitana*: A New Copy of the Flavian Municipal Law" 1986 (76) *Journal of Roman Studies*, 147 – 243, Ch. 84.

23 Compare Rapske (n. 3) at 116.

as burning, breaking or rending asunder. To put it differently, loss had to be inflicted by the defendant's body (or an extension of his body, such as a sword) on the object, so that Paul's mere verbal command to the "python spirit" to leave the slave girl would not have satisfied this requirement of the *lex*.²⁴ In addition, satisfying the requirements of fault and of causation would have proved difficult. As far as the first is concerned, the concepts of *dolus* and *culpa* had already evolved by this time, but proving either of these in relation to Paul's utterance would not have been easy, especially since it would have been necessary to show that Paul had acted wrongfully. The same may be said about causation. Even though the Roman jurists took a pragmatic and casuistic approach to causation, it would still have been legally difficult to prove a causal link in law between a verbal utterance and the loss of clairvoyance.

The owners of the slave would also have found it difficult to prove insult in this case. Although by the time of this episode this delict had evolved from a number of *ad hoc* instances into a coherent principle, expressed by the term *contumelia*, it seems unlikely that Paul's utterance would have been actionable as such. For it to be non-physical *contumelia*, it had to be shown that "it is inflicted on the person or relates to one's dignity or involves disgrace ..." (Ulpian citing Labeo in D. 47.10.1.1 – 2 (Ulpian. 56 ad Ed.): Watson translation). Although the owners could be vicariously insulted by actions against a slave, these were usually physical acts such as beating and torture, rather than mere verbal utterances (see D. 47.10.15.35 (Ulpian. 77 ad Ed.)). The final civil-law option available to the owners of the slave was the remedy of *servi corruptio*.²⁵ Although this delict related to verbal rather than physical acts, it would have been difficult for the owners of the slave to prove a case of *corruptio*. For one thing, they would have had to show that the wrongdoer had acted maliciously. The examples mentioned in the legal sources seem to suggest that it had to be demonstrated in a court of law that a slave had undergone a "moral" deterioration of character. It seems that it would not have been easy to do so in this case. As this brief overview shows, it may have been difficult for the owners of the slave to find an appropriate remedy at civil law. This may account for the seemingly disjointed nature of the incident and the claims eventually brought.

According to the Acts, Paul and Silas were accused of the following:

[20] et offerentes eos magistratibus, dixerunt: Hi homines conturbant civitatem nostram, cum sint Iudaei; [21] et annuntiant morem, quem non licet nobis suscipere neque facere, cum simus Romani.²⁶

[20] And brought them to the magistrates, saying, These men, being Jews, do exceedingly trouble our city, [21] And teach customs, which are not lawful for us to receive, neither to observe, being Romans.²⁷

24 I have not found a single text in which a verbal utterance gave rise either to a statutory action or to an *actio utilis* or *in factum* under the *Lex Aquilia*.

25 Bonfiglio, B. *Corruptio Servi* (Milan: Giuffrè, 1998) generally, but especially ch. 2.

26 See n. 6 *supra*.

27 See n. 7 *supra*.

The juxtaposition between Jewish and Roman identity in this passage is problematic and has been widely discussed.²⁸ I shall return to this point presently. For the moment, I wish to focus on the accusations levelled against Paul and Silas. From both the Greek text and its Latin rendition, it is clear that the owners of the slave did not accuse Paul and Silas first and foremost of being Jewish.²⁹ The accusation was twofold: a) that they had “disturbed” (lit. upset/confused) the *civitas* and b) that they had proclaimed a custom, which the inhabitants of the *civitas* could not legally adopt or follow.³⁰ The key to identifying the offence of which they were accused in this case lies in the term *civitas* – Paul and Silas were accused of an offence against the local community and, most likely, a form of *vis*.³¹ By the time of this episode in the mid-first century CE, *vis* had been actionable under Roman criminal law for more than a century. It had become actionable in 78 BCE under the *Lex Iulia* which introduced a standing court for *vis*.³² While this statute originally only covered serious attacks on the public order, its provisions were extended by the *Lex Plautia de vi* of c. 70 BCE to “offences against private individuals that were *contra rem publicam*”.³³ This Act was supplemented by two further acts, the *Leges Iuliae de vi*, which were introduced in the late Republic/early Empire. These seem to have distinguished between *vis publica* and *vis privata*, but much about them remains unclear.³⁴ It has been suggested by Robinson that these Acts also introduced a range of new offences, including offences by magistrates, specifically for punishing Roman

- 28 See Tajra (n. 2) at 13 for a survey of scholarly opinion. According to the author, the fact that they were Jewish was not legally significant during this period, since individuals who practised the Jewish religion had been granted special legal privileges since the time of Julius Caesar. It may well be, as suggested by the author (at 16) that the accusers, by raising the issue of the defendants’ Jewish identity, were attempting to bring the matter under the jurisdiction of Jewish courts. For a discussion of these privileges, see Boatwright, M.T. *Peoples of the Roman World* (Cambridge: University Press, 2012) at 139 – 140.
- 29 Omerzu (n. 3) at 140; Laymon (n. 8) at 63; Rapske (n. 3) at 118 notes that the accusation of Jewish identity may be related to the then recent troubles, which had led the Emperor Claudius to expel the Jews from Rome.
- 30 On who could bring a criminal accusation in such cases, see Jones, A.H.M. *The Criminal Courts of the Roman Republic and Principate* (Oxford: Blackwell, 1972) at 61 – 62. See, also, De Vos, C.S. “Finding a Charge that Fits: The Accusation against Paul and Silas at Philippi (Acts 16.19 – 21)” 1999 (74) *Journal for the Study of the New Testament* 51 – 63 at 51.
- 31 Tajra (n. 2) at 12; Omerzu (n. 3) at 126; Rosenblatt, M.-E. *Paul the Accused – His Portrait in the Acts of the Apostles* (Collegeville Minn.: Liturgical Press, 1995) at 45; Rapske (n. 3) at 116 – 118 and for a comprehensive survey of this, see Harries, J. *Law and Crime in the Roman World* (Cambridge: University Press, 2007) at 106 – 117.
- 32 Robinson, O.F. *The Criminal Law of Ancient Rome* (London: Duckworth, 1995) at 79; see, also, Mommsen, T. *Römisches Strafrecht* (Leipzig: Duncker & Humblot, 1899) at 652 – 666.
- 33 Robinson (n. 32) at 79.
- 34 Berger, A. *Encyclopedic Dictionary of Roman Law* (Philadelphia: The American Philosophical Society, 1953) entry on *vis* states “The distinction [between ‘public’ and ‘private’ violence] which was neatly defined in this legislation was later distorted through imperial enactments and in Justinian’s compilation ... The original distinction may have been based on whether the crime violated direct interests of the state (*vis publica*) or those of a private person (*vis privata*).”

citizens without a proper trial.³⁵ Those found guilty of *vis* were subjected to a range of punishments according to their status, such as beating, imprisonment or death. One of the options was banishment, although at this time the distinction between *humiliores* and *honestiores* in Roman criminal law had not yet become formalised.³⁶ When the accusations levelled against Paul and Silas are seen in the light of the state of the law at that time, it seems clear that the owners of the slave girl were accusing them of some form of *vis*, most likely under the *Lex Iulia de vi*, and that the reference to the foreign custom was an attempt to argue that their behaviour was “*contra rem publicam*”³⁷ as can be seen from D. 48.6.3pr (Marcian. 14 Inst.).³⁸

3. The punishment

If this was indeed the nature of the accusation, the question arises why the events reported in the Acts do not suggest that a lawsuit took place:³⁹

[22] Et cucurrit plebs adversus eos; et magistratus, scissis tunicis eorum, jusserunt eos virgis caedi. [23] Et cum multas plagas eis imposuissent, miserunt eos in carcerem, praecipientes custodi ut diligenter custodiret eos.⁴⁰

[22] And the multitude rose up together against them: and the magistrates rent off their clothes, and commanded to beat them. [23] And when they had laid many stripes upon them, they cast them into prison, charging the jailor to keep them safely.⁴¹

...

[35] Et cum dies factus esset, miserunt magistratus lictores, dicentes: Dimitte homines illos. [36] Nuntiavit autem custos carceris verba haec Paulo: Quia miserunt magistratus ut dimittamini: nunc igitur exeuntes, ite in pace. [37] Paulus autem dixit eis: Caesos nos publice, indemnatos, homines Romanos miserunt in carcerem: et nunc occulte nos ejiciunt? Non ita: sed veniant, [38] et ipsi nos ejiciant. Nuntiaverunt autem magistratibus lictores verba haec. Timueruntque audito quod Romani essent; [39] et venientes deprecati

35 Robinson (n. 32) at 79 – 80. Sherwin-White (n. 3) at 80, 177 suggests that this part of the narrative may have been deliberately included to emphasise that the offence was against *Roman* custom.

36 See, also, D. 48.6.10.2 (Ulpian. 68 Ed.) which mentions that a person found guilty of this offence can be “interdicted from fire and water”. Greenidge, A.H.J. *The Legal Procedure of Cicero’s Time* (Oxford: Clarendon Press, 1901) at 507; Rapske (n. 3) at 118.

37 Tajra (n. 2) at 13; Omerzu (n. 3) at 130 – 131. For an alternative interpretation, see De Vos (n. 30) at 54 – 55, 62 – 63 who thinks that the charge was one of sorcery.

38 “In eadem causa sunt, qui turbae seditionisve faciendae consilium inierint servosve aut liberos homines in armis habuerint.”

39 Tajra (n. 2) at 3 suggests that a lawsuit was not instituted because the municipal magistrates were careful not to deal with a matter which could give rise to religious conflict, see, also, Omerzu (n. 3) at 130 – 131.

40 See n. 6 *supra*.

41 See n. 7 *supra*.

sunt eos, et educentes rogabant ut egrederentur de urbe. [40] Exeuntes autem de carcere, introierunt ad Lydiam: et visis fratribus consolati sunt eos, et profecti sunt.⁴²

[35] And when it was day, the magistrates sent the serjeants, saying, Let those men go. [36] And the keeper of the prison told this saying to Paul, The magistrates have sent to let you go: now therefore depart, and go in peace. [37] But Paul said unto them, They have beaten us openly uncondemned, being Romans, and have cast us into prison; and now do they thrust us out privily? nay verily; but let them come themselves and fetch us out. [38] And the serjeants told these words unto the magistrates: and they feared, when they heard that they were Romans. [39] And they came and besought them, and brought them out, and desired them to depart out of the city. [40] And they went out of the prison, and entered into the house of Lydia: and when they had seen the brethren, they comforted them, and departed.⁴³

In order to answer this question, we must look at the sequence of events as described in this passage:

- (1) Paul and Silas are accused of *vis*;
- (2) (Immediately or some time afterwards) they are flogged and thrown into prison;
- (3) An earthquake occurs and the jailer is converted;
- (4) The magistrates send their *lictores* to the prison to release Paul and Silas;
- (5) Paul proclaims his status as a Roman citizen and refuses to leave quietly;
- (6) The magistrates, anxious about his claim, come to the prison and ask the two to leave the city.

Textual analysis of this part of the episode has shown that some elements of the narrative are suspect and were probably included by Luke for effect, using different accounts of the events.⁴⁴ It is therefore difficult to distinguish between fact and embellishments. An analysis of this passage in terms of Roman court procedure may, however, shed new light on the events recorded here. Let us take points 1 and 2 together. Why, if Paul and Silas were accused of *vis* under a statute, did the local magistrates of Philippi not order a lawsuit to be instituted? The answer to this problem is twofold. First, there is the issue of jurisdiction as mentioned above. Chapter 84 of the *Lex Irnitana* provides a list of issues in respect of which a municipal court does not have jurisdiction. One of these is “any matter in which there has been *vis* other than under the interdict, judgement or order from the person who is in charge of the administration of justice” (González translation). While it cannot be ascertained whether the same prohibition applied in Philippi (especially given its status as *colonia*), the regular exclusion of such matters from local jurisdiction in other municipal laws suggests as much. Assuming that this jurisdictional prohibition applied in Philippi, the only two options open to the local magistrates would have been a) a *vadimonium*⁴⁵ to a court which did have jurisdiction – in this case most likely the

42 See n. 6 *supra*.

43 See n. 7 *supra*.

44 See Tajra (n. 2) at 25 – 26; Omerzu (n. 3) at 114 – 115.

45 Which would have required money, see Rapske (n. 3) at 120.

court of the governor, or b) to deal with the matter under their own right of coercion – *coercitio*.⁴⁶ The second component of the answer relates to the status of Paul and Silas. To the Roman local magistrates, they were merely itinerants, not *incolae* or *cives* and, since Paul chose not to reveal their status as Roman citizens until afterwards, the magistrates in all likelihood acted as they would have in any case where a group of *incolae* or *cives* had accused two impoverished itinerants of *vis*.⁴⁷

This brings us to the next set of events – the flogging and the imprisonment. Both were permissible within the broad scope of the municipal magistrate's *coercitio*, but two points are worth noting.⁴⁸ First, some questions have been raised about the revelation of Paul's citizenship towards the end of the passage.⁴⁹ Since this revelation – and the concern to which it gave rise amongst the local magistrates that they might have transgressed the *Lex Iulia de vi* themselves⁵⁰ – is predicated upon the prior flogging of the two missionaries, it does seem to add a certain *deus ex machina* quality to the narrative, and so cast some doubt on the veracity of this part of it. That said, it is commonly accepted that the events occurred exactly as described in the text and that Paul had a reason for not divulging his status until this point.⁵¹ As for the imprisonment, if we accept that this occurred, there could be any number of reasons for it. The most obvious seems to be linked to the status of Paul and Silas.⁵² Because they were itinerants who had at that point not yet revealed their citizenship status, the municipal magistrates may have decided to place them in "preventative" custody so that they could decide what to do with them, and also in order to shield them from the anger of the owners of the slave.⁵³

46 For a survey of the extent of these powers at a municipal level, see Tajra (n. 2) at 11. See, also, Sherwin-White (n. 3) at 75 for a discussion of the "police-functions" of local magistrates. The standard discussion remains that of Mommsen, *T. Römisches Staatsrecht*, 3rd ed. (Leipzig: Hirzel, 1887) at 136 – 161.

47 Tajra (n. 2) at 26.

48 Omerzu (n. 3) at 147 – 151; Rapske (n. 3) at 124 – 125 for a survey of the different types of corporal punishment permissible under Roman criminal law. Flogging of a citizen was prohibited by the *Leges Valeriae et Porciae*, see Robinson, O.F. *Penal Practice and Penal Policy in Ancient Rome* (London: Routledge, 2007) at 107. See also Mommsen (n. 32) at 981 – 986.

49 Omerzu (n. 3) at 153 – 157. See, also, Wenham, D. and Walton, S. *Exploring the New Testament*, 2 vols. (London: SPCK, 2001 – 2002) at 278.

50 Omerzu (n. 3) at 159.

51 Omerzu (n. 3) at 160; Laymon (n. 8) at 65; Hooker (n. 3) at 110; Rapske (n. 3) at 129 – 134. Sherwin-White (n. 3) at 62, 66 suggests that those holding Roman citizenship may have withheld this knowledge from local magistrates if they had an interest in the matter not being referred to another court or to Rome. For a survey of the legislation which governed an appeal by a citizen against arbitrary abuse of power by a magistrate, see Greenidge (n. 36) at 319 – 323.

52 See, for example, D. 5.1.19.2 (Ulpian. 60 Ed.) on the difficulties involved in defending yourself against a lawsuit elsewhere (i.e. not in your home city). See Rapske (n. 3) 127.

53 See, also, D. 48.3.5 (Venul. Sat. 2 de Iud. Pub.) where it is stated that if an accused confesses, he is to be kept in a public prison until judgement is given in the matter. Greenidge (n. 36) at 332 observes that while a custodial sentence was legally part of the *coercitio*, it was not a penalty as such. See, also, Mommsen (n. 32) at 960 – 963.

4. Conclusion

There can be no doubt that this episode from the Acts, like any other form of literature (including legal texts), may be viewed from more than one perspective. It seems to have been compiled by Luke to demonstrate that Paul and Silas were subjected to cruel (read “inequitable”) and arbitrary “justice” meted out by local magistrates under Roman law.⁵⁴ When this account is tested against modern knowledge of Roman procedural law, however, it becomes clear that Luke’s account of this episode, far from confirming the Christian perceptions of Roman justice, in fact masks a sophisticated system of municipal justice that was far from arbitrary. Of course, critics of this approach may argue that such an argument is “reductionist” since it assumes “regularity of behaviour” which cannot be assumed.⁵⁵ This I do not deny, but modern scholars, using their knowledge of Roman legal procedure, in many respects a ritual that requires and indeed enforces “regularity of behaviour”, may in passages such as these obtain brief glimpses of the workings of Roman justice. This opens up a new vista in relation to Roman *aequitas*.

Abstract

The relationship(s) between “law in books” and “law in action” is fast emerging as an important area of research in relation to “law and society in the Roman world”. Contrary to popular perceptions, research in this area does not focus on the gap between “law in books” and “law in action” (for the existence of such a gap is almost inevitable), but on the reasons for the existence of the gap and the various ways in which individuals accessed justice under these circumstances. To that end, the focus of this article is a specific episode recounted in the New Testament, when Roman legal officials treated Christian missionaries seemingly unfairly and in contravention of Roman law. The purpose of this article is to demonstrate that accounts such as these need to be carefully analysed using elements of textual criticism in order to uncover perceptions of justice in the Roman world.

54 Omerzu (n. 3) at 163, 165; Kim, S. *Christ and Caesar – The Gospel and the Roman Empire in the Writings of Paul and Luke* (Grand Rapids Mich.: Eerdmans, 2008) at 172. See also Winter, B.W. and Clarke, A.D. *The Book of Acts in Its Ancient Literary Setting* (Grand Rapids Mich.: Eerdmans, 1993) at 347.

55 Meeks (n. 5) at 4 – 5.