

J A Crook, *Legal Advocacy in the Roman World*, London: Duckworth, 1995.

As Crook points out, what has been written about the Roman bar in the past has tended to ignore questions about the role and function of advocates within the legal system. Often the focus has been on the relatively well known career of Cicero rather than on characteristics of the legal system itself. Crook has set out with a series of new questions about Roman advocacy and has not shied away from the difficulties. This makes his book interesting for the specialist, but complicated for the general reader, since there is much discussion of theoretical questions relating to the Roman legal system.

His first area is the extent to which advocacy was employed in the law in the Roman period; was it universal or not? Chapter I addresses the question of the function of advocacy. The cultural contrast with Classical Athens is explored in Chapter II, Section 1. Chapter II, Section 2 is devoted to the significance of the division in the law between the role of advocates and jurists. The evolution of a profession of advocacy is examined, and whether there was a sudden change to the formal requirements made of advocates at some specific time under the Principate (e.g. under Constantine, as part of the growth of bureaucratisation). The impact of rhetoric on forensic practice is another major area of concern, which provides access to the role of argument in the Roman courts. Crook points out that there has been a modern growth of interest in the methods of argument of the Roman jurists which has not been matched by a like interest in advocacy. This has been because so much of the modern attitude to Roman law has been dominated by interest in the growth at Rome of a "jurist-made system of positive law". Crook's interest is in relating the system of law to the social circumstances and his focus is therefore more on the factors which resulted in a win or loss in the courts rather than on the rules themselves.

Litigation can be seen as giving the opportunity for public display of to-and-fro argument, and a socially oriented approach to Roman law allows us to view the political nature of forensic oratory without distaste. Some modern prejudices have crept into analysis of procedural aspects of Roman law, and Crook pleads for an understanding of the Roman system on its own terms.

Much of the evidence for Crook's study comes from traditional sources such as the speeches, treatises and miscellaneous literary texts, but he also has untraditional recourse to the papyri of the first three centuries AD. He claims for these three advantages: they provide evidence on the period when our main literary sources have run out, and they also permeate further into the social fabric and provide evidence of more lowly litigation, and finally they sometimes provide at least a summary of the

arguments of both sides as well as the judgment. Crook argues forcefully that this material is relevant to the Roman situation and not to be restricted to an Egyptian context. These Greek speaking advocates were trained in what was essentially the same tradition as that of the Roman advocates, and provide insights relevant to circumstances throughout the Roman world.

This papyrological evidence, and the fact that it has not previously been subjected to such detailed scrutiny, represents the most difficult part of this book. Crook examines quite a number of individual papyri in an important chapter (Chapter III, pp 58-118), and these will prove somewhat indigestible for any but the most specialised reader; the conclusions derived from this material are however important.

In Chapter IV discussion turns to the traditional evidence regarding advocacy. This is divided into sections. The focus remains on the role of advocacy in the legal order, and Crook tries to avoid excessive overlap with existing discussions of the material.

The first deals with the uses of advocacy to client and advocate. Crook suggests that the patron-client relationship in the form of the advocate-client relationship proved an enduring one in the legal context. In the Republic there had been an enormous emphasis on statesmen making their impact through the word; a strong link had been forged between *eloquentia* in political and forensic oratory and growth in political power through the maintenance of *clientela*. This was reflected in the persistence of the term *patronus* for an advocate. Other topics investigated include the prevalence of the use of advocates, and the question of whether the humble could always obtain an advocate if wanted. Pictures of advocates obtaining rewards in the form of bottles of plonk emerge from satirical sources, but these seem to imply that patrons normally would support their clients regardless of standing. The expectation was that the *patronus* would benefit in less tangible ways through advertising his support for his clients. Interestingly, specialisation in advocacy was confined to the rhetorical components of the speech, and not to the type of case (civil/criminal).

Next is the question of the practice of the courts. Although criminal proceedings are better attested than civil, it seems to be clear that the process involved the judge hearing both sides and only concerning himself with what was brought to his attention, with the proviso that he could ask questions. The advocate in criminal proceedings might have to appear for his client twice in the same case, once in the *actio prima* and again (after the compulsory adjournment) in the *actio secunda*. Similarly in civil proceedings there was a stage *in iure*, equivalent to a stage of 'pleadings' followed by a stage *apud iudicem* (the trial of the action). In each *actio* advocates delivered set speeches with priority to the prosecution; this would be followed by examination of oral and written testimony of the witnesses; then cross-fire between advocates, and an immediate verdict. Crook is careful to outline some of the variations on this standard theme,

and emphasises that advocates would need a good knowledge of the law to be effective. He notes a number of passages which show that the advocate tended to despise the jurist because of his remove from the active life of the law.

The chapter concludes with four excursuses. These cover the terminology used of advocates (with a useful and novel section on epigraphic evidence (p 150ff.)), the advocate as 'representative' of his client, the relationship of the schools of rhetoric and specifically the *controversiae* to the practical world and work of advocacy (it has often seemed that the topics declaimed about in *controversiae* have no relationship to the real nature of Roman law, and Crook here examines several complex problems. He argues against the contention that the *controversiae* were based on laws "fairly closely related to contemporary Roman law" (Bonner). Rather the function of the *controversiae* is closer to that detected by Clarke, to provide 'the instrument for discovering all the topics of argument inherent in a particular situation'. Crook sees some justice in the criticisms about the appropriateness of the training thus provided, criticisms already levelled against the *controversiae* in antiquity), and finally the extent to which the work of Quintilian may represent a practical manual as well as a work of theory (here Crook reminds us that Quintilian was himself a leading practitioner, and cannot therefore be accused of issuing pearls of theoretical wisdom from an ivory tower. He should therefore be taken seriously as an authority on the role of advocacy in the Roman world).

Chapter V tries to correct some of the excesses of modern approaches to Roman advocacy, and especially to dispel the impression that advocacy underwent a chronic decline as a result of the growth of imperial power (some of the blame for this view can be assigned to the *Dialogus de Oratoribus*, which has too often been accepted at face value [incidentally Crook casts doubt over whether this work is correctly attributed to Tacitus]). The arrival of Greek rhetoric in the late Republic cannot be blamed for a phantom division between advocacy and jurisprudence, and it is wrong to imagine that this supposed rift was finally cured by the development of professional requirements at the end of the classical age. Advocacy should be seen as integral to the Roman legal world throughout. Crook, to show this, examines what we know of the activity of advocates at various stages in Roman history. The problem has been that rhetoric, the principal tool of advocacy, has been adjudged by modern critics as in some way fraudulent, since its aim is to twist the most out of a weak argument, and its target is victory rather than truth. Jurisprudence in contrast has been seen as "self-evidently virtuous and truth-seeking" (p 172). He detects a tendency to imagine that 'law always, as it should, moves teleologically in the direction of an "autonomous science of law"'. The whole chapter underlines the existence of stereotypical views about development of the Roman legal system, and the need for careful examination of all presuppositions.

In conclusion Crook deduces that advocates were employed by liti-

gants who believed that they could not themselves make an adequate job of presenting in a convincing and formal manner everything that could be said in favour of their case. The advocate's function was to win a 'victory in an *agon* dictated by an "adversary system"' (p 197). The free nature of this contest tells us something about the importance placed on persuasion in Greek and Roman society.

Crook has consciously avoided the question of the influence of rhetoric on the rules of Roman law, a subject of importance in determining the extent of Greek influence on Roman legal concepts and institutions, but he does see his contribution as related to the business of asking comparative questions about the sort of societies which are "likely to have a flourishing profession of advocacy" (p 10).

This book will prove fundamental for those who want to understand the role of advocacy in Roman social life, and will also help those with a more legal orientation to appreciate the day to day working of an important part of the Roman legal system. Some parts of the book will be too technical and of less immediate appeal to those whose main interest is not in the ancient world.

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