

Human Rights in the Ancient World
by Richard Bauman
(Routledge Classical Monographs,
London and New York, 2000)

Stephen Bennetts*

The origins of the modern notion of human rights are generally traced back to classic texts inspired by the 18th century Enlightenment such as the *American Declaration of Independence* and the French Revolutionary *Declaration of the Rights of Man and the Citizen*, and later, the 1948 *Declaration of Human Rights*.

The somewhat arresting title of this book highlights Richard Bauman's novel contention that the true origins of modern human rights must be traced back to the juridical and cultural debates of the Roman Republican and Imperial periods.

Discussion of human rights in a cross-cultural or historical setting frequently evokes the question of cultural relativism and cultural or historical context. A proponent of Australian indigenous rights might argue for the recognition of Aboriginal customary laws which may involve spearing through the thigh as a form of tribal punishment. The same person might however oppose calls for the reintroduction of corporal punishment in schools or the kind of statutory physical punishments practiced in certain Middle Eastern countries.

In a society based on slavery where human beings were habitually torn apart by wild beasts, burned alive or killed in gladiatorial contests as a form of public entertainment, Bauman identifies a juridical and philosophical tradition which sought to temper *saevitia* (savagery) with what he terms *humanitas Romana*. One is reminded at times of Henry Reynolds' study *This Whispering in our Hearts*, which documents the few brave voices who spoke up in the first hundred years of white settlement in Australia for the rights of Aboriginal people at a time of savage dispossession and genocide.

* Stephen Bennetts has an Honours degree in Classics from the Australian National University. He is currently working as an anthropologist on the Martu native title claim through the Centre for Anthropological Research at the University of Western Australia. He was co-editor of the *Indigenous Law Bulletin* and editor of the *Australian Indigenous Law Bulletin* from 1998-2000.

The reviewer thanks Dr Douglas Kelly for reading an earlier draft of this review. Any errors are the reviewer's own.

In the case of the Romans, one looks largely in vain for condemnation of slavery or the brutality of the games: the games continued into the 5th century AD, well beyond the advent of the first Christian emperor Constantine, and slavery itself was never abolished. Although progressive Roman jurists tinkered at the edges of the institution of slavery, we have no evidence that it was ever seriously challenged by members of the ruling elite during the Classical period.¹ This is disturbingly clear from this attempt by the first Christian emperor Constantine to regulate treatment of slaves:

If a master beats a slave with light rods or lashes, or puts him in chains, and the slave dies, the master incurs no criminal liability. But he is guilty of homicide if he kills a slave intentionally by a blow of a club or stone, or has him hanged by a noose or thrown from a high place, or poisons him, or subjects him to public punishments by cutting through his sides with metal claws, burning him alive, or torturing him to death. But disciplinary correction that is not meant to kill the slave, but to improve his behaviour, is not penalised.²

Stoic philosophy is something of a moral high point in an otherwise depressing scene: the philosopher Seneca propounds the Stoic doctrine of universalism which seems at odds with dominant Roman ideology and practice of the time, and which seems in keeping with the human rights texts of the Enlightenment:

We live in common, in a society which judges certain rights as common to the human race, so much so that acts can be classed as wrong, even when done to an enemy. Here is a rule of thumb for human relationships; everything that you see, both divine and human is one, we are the parts of one great body. We are all blood relatives, created by a nature from the same source for the same purpose ... Let us possess things in common, for our birth is common.³

Elsewhere Seneca argues for humane treatment of slaves, remembering 'that he whom you call your slave sprang from the same stock and breathes, lives and dies under the same skies as you'. In a world dominated by racial prejudice, he notes that 'the colour of the Ethiopian is not something to be specially noticed; nothing is disgraceful for an individual if it is a characteristic of his whole nation'. The humanitarian principles of Stoic philosophy also inspired the legislation of 2nd century Roman Emperor Marcus Aurelius, as well as his famous philosophical work the *Meditations*.

1 The slave revolt led by Spartacus in 73 BC was perhaps the only serious threat to the slave system in the Classical period.

2 *Codex Theodosianus* (9.12.1, 2).

3 Seneca *Epistulae*. 48.2.3, 95.50-53, 120.6; *Clementia* 1.18.1-2.

In assessing the main achievements of *humanitas Romana* as an early form of human rights discourse, Bauman identifies:

- legal provisions for voluntary exile as an alternative to capital punishment;
- legal provisions to allow redress for non-Romans against the depredations of Roman provincial governors, including the establishment at Rome of special corruption courts to hear such cases;
- the liberal extension of Roman citizenship under the Empire to non-Romans, which allowed the Romans to create an enduring empire. According to Bauman, 'Rome went down to posterity as the great exponent of multiculturalism';
- freedom of speech under the Republic, but to a far lesser degree under the autocratic Imperial system;
- the development of the concept and exercise of *clementia* and *humanitas* as desirable attributes in a ruler, which ameliorated the excesses of Roman rule and were formalised under the Empire;
- the emergence within Roman law of *humanitas* as a definitive canon of legal interpretation invoked in accordance with the principles of equity. This helped Roman law to break away from the harsh penalties of archaic Roman law, and introduced a degree of flexibility that 'allowed members of the human race to be treated as individuals with diverse problems rather than as ciphers'; and
- the repeated restraints under the Empire on castration both of freeborn males and of slaves, a widespread practice in the ancient world, and indeed in modern Europe until the 19th century.

The notion of public utility was often a counterweight to the recognition of human rights in Rome, just as it is in the contemporary world; witness contemporary debates over the advisability of applying trade sanctions to China over human rights violations. The seriousness with which Romans prosecuted corruption and human rights by Roman officials in the provinces was motivated not by Seneca's more abstract and disinterested notion of human rights, but rather by the idea that such behaviour threatened Roman imperial rule by diminishing Roman prestige.

In 61 AD, Nero's urban prefect was murdered by one of his slaves. Under an earlier Augustan law, every slave under the same roof at the time of such a murder was to be put to death as a deterrent. The entire household of 400 slaves, including men,

women and children were condemned to death, despite the protests of some members of the Roman Senate against the punishment of women, children and the innocent. It was held that *utilitas publica* took precedence over the rights of individuals. In what seems like a clear indication of a divergence of attitude between the senatorial slaveholding class and the common people, Tacitus reports that there was a hostile demonstration outside the Senate, and that Nero had to station troops along the route leading to the place of execution.⁴

As both a Classical scholar and legal authority on Roman and Modern Civil Law, Bauman is acutely conscious of the huge debt which our own legal system and culture owe to the Romans. Although the book argues impressively for the existence of a human rights tradition within Roman law and society, Bauman does appear to be guilty at times of special pleading on behalf of the Romans. The book is written to some extent under the spell of 'the Grandeur that was Rome', while other recent classical scholars such as Finley and de Sainte Croix have turned a colder and less sentimental eye on the Romans.⁵ Some of Bauman's observations on human rights in the modern world are also perhaps a little glib, and he quotes admiringly the much cited but tendentious passage from Gibbon's *Decline and Fall of the Roman Empire* describing the period of the Antonine Emperors:

If a man were called to fix a period in the history of the world during which the condition of the human race was most happy and prosperous, he would, without hesitation name that which elapsed from the death of Domitian through to the accession of Commodus.⁶

One cannot help feeling that for the large number of slaves in the Roman Empire and many others, life under the Antonines must have been pretty much business as usual, notwithstanding the rather nitpicking recodifications of Roman jurists such as the passage cited above.

The problem here, as in some other parts of the book, is one of emphasis and interpretation, and a failure at times to adequately address Roman social history from the perspective of the vast majority of its participants. The book makes a

4 Bauman, influenced perhaps by the tradition of aristocratic disdain for the urban populace common in Roman sources, believes that these disturbances were not a genuine expression of popular indignation, but were instead orchestrated by smaller slaveholders who could not tolerate this precedent without financial disaster.

5 Cf De Ste Croix G E M *The class struggle in the ancient Greek world: from the archaic age to the Arab conquests* (1981); Finley M *Ancient slavery and modern ideology*, (1980).

6 Gibbon E (1776-88) *The Decline and Fall of the Roman Empire*, Ch 3. Abridged edition, D M Low (ed) (1960).

stronger contribution as an exposition of the development of Roman legal doctrine than as a balanced account of social history, for Bauman's account of the achievements of *humanitas Romana* needs at times to be more carefully qualified in terms of which orders of society would have benefited from some of the advances he discusses. This is true for instance of his comments on the legal provision of voluntary exile as a substitute for capital punishment, which do not sufficiently stress the fact that this was an option only for elite malefactors. Although perhaps outside the scope of this study, it is also unfortunate that Bauman does not spell out a little more fully the process of transmission of *humanitas Romana* to the modern world through the Enlightenment and earlier, through legal codes inherited from the Romans.

Before discounting the Roman record on human rights too hastily, we should of course be conscious of contradictions and hypocrisies in our own modern debate over human rights which perhaps have some parallels in the ancient world: the landmark *American Declaration of Independence* extolling the notion that 'all men were created equal' was drafted by a man who owned over 400 slaves. Chomsky has recently highlighted the contradiction inherent in fighting a war in Kosovo ostensibly in defence of human rights which caused the deaths of hundreds of civilians, many of them the supposed beneficiaries of the war.⁷ ●

7 Chomsky N 'Crisis in the Balkans — Kosovo is another illustration of US policy to act in such a way as to escalate violence' (May 1999). Available at: <www.zmag.org/chomsky/index.cfm>.