

for a paperback. Few scholars will have it on their shelves; in fact, as library budgets dwindle, especially in countries which experience crippling exchange rates, not many universities will have this book either. Only one library in New Zealand has it (because I ordered it in 1994 before I knew how much it cost). Searching, with help from the interlibrary loan people in my University library, has revealed only five other copies in libraries throughout the southern hemisphere; predictably, there are many more in libraries in the northern hemisphere, but even then the count does not reach the century mark. To put it bluntly: this book is worth having, but not at the price it is currently being offered.

One further point needs to be made. I stated earlier that this is a case where the subtitle is vital. This is also a case where the sub-subtitle (*Parte prima*) appears to mislead: it is clearly stated that this is part one, and we are told in the preface (p. 11) that part two will deal with *i momenti più salienti della vita umana di ogni tempo*, namely (and the list is a little surprising) betrothal, marriage, adultery, and divorce. There is no mention of a third volume, though one might have expected some discussion of (inter alia) inheritance law in the context of the family. In any event, the second part has not appeared, and the New York Public Library catalogue,¹⁴ for example, includes the following message: "Please note [a typographical error] in this volume. The volume has been erroneously labelled Part one"—Inserted errata slip.' My copy has no such slip, nor has 'L'Erma' di Bretschneider been able to clarify the situation, apart from telling me that there are currently no plans to publish part two. I have been unable to contact Professor Fayer, but it would be good to know if a further volume is forthcoming. I would certainly welcome it, but one hopes that it will be at a much more affordable price if and when it does appear.

THE ROMAN-DUTCH LAW OF EVIDENCE AT THE CAPE

John Hilton

Department of Classics, University of Natal
Durban 4041, South Africa

M. L. Hewett (tr. and ed.), *De Testimoniis: A Thesis by Gysbert Hemmy on the Testimony of the Chinese, Aethiopians, and Other Pagans*. Cape Town: private publication¹ 1998. Pp. xxxiii + 125. ISBN 0-620-22647-1. ZAR150.

The fall of the Nationalist government in South Africa in the last decade of the previous millennium has been followed by a reconsideration of the history of the country. Many recent books have focused particularly on the question of slavery at the

¹⁴ Accessed online at <<http://catnyp.nyp.org>>.

¹ This book is available from the translator at the following address: 'Stekjeshof', Fleetwood Avenue, Claremont, Cape Town 7700, South Africa.

Cape between the date of the first arrival of slaves in 1658 and the emancipation of the slaves there in 1828 (finally taking effect in 1838).² These studies omit all mention of the work under review—here translated into English for the first time. This is a doctoral thesis on the Roman-Dutch law of evidence presented to the University of Leiden in 1770, consisting of prolegomena (pp. iv-xix), a short bibliography (pp. xx-xxii) and a facsimile of the original Latin dissertation with a facing English translation (pp. 9-67). It is of enormous interest to those engaged in a reappraisal of the impact of European colonialism on the cultural history of South Africa, the reception of Roman Law, and neo-Latin.

In her prolegomena (p. x-xi), Hewett gives four reasons for undertaking the work. These are that it will shed light on: (1) 'the history and circumstances of the settlement' at the Cape of Good Hope in the eighteenth century; (2) 'the attitude of at least one of the company servants to the legal problems at the Cape'; (3) 'the subject of evidence as acceptable in the Netherlands and *ius commune* countries'; and (4) 'the interface between researchers and the source material available in the court records'. To be fair, the thesis deals fully with only the second and third of these points.

The first three chapters of the work address the third topic. Chapter 1 (pp. 9-17) focuses on the importance of reliable witnesses for establishing the truth in legal cases in Roman-Dutch law and the qualities that such witnesses should ideally possess. This subject is pursued further in the second chapter (pp. 18-30), which discusses the circumstances in which the evidence of slaves, the mentally or physically handicapped (specifically the deaf and the blind), close relatives of the accused, criminals, and people of ill-repute (*infames*, women, non-Christians) can be accepted in court. Chapter 3 (pp. 21-45) outlines the grounds on which evidence can be ruled inadmissible (*impietas*, 'impiety' and *malitia*, 'wickedness'; *infamia*, 'disrepute'; *odium*, 'hatred' of the accused; and *utilitas*, 'self-interest').

Thus far the thesis addresses standard issues in the Roman-Dutch law of evidence.³ What makes the treatise unique, however, is the discussion of the admissibility of the evidence of 'Aethiopians, Chinese, and Other Pagans' (including the complaints of the 'East Indian slaves' against their masters) at the Cape in the fourth (pp. 45-58) and fifth chapters (pp. 59-67), which broadly deal with the second topic mentioned above. Hemmy argues that the testimony of these peoples (more recognisably the slaves imported from Malaysia, Mocambique, Madagascar, and Angola, to work at the Cape, and the indigenous Khoi-Khoi tribal group) should be accepted, with the standard provisos concerning the credibility of evidence in a court

² R. Shell, *Children of Bondage: A Social History of the Slave Society at the Cape of Good Hope, 1652-1838* (Hanover 1994); R. L. Watson, *The Slave Question: Liberty and Property in South Africa* (Hanover 1990); N. Worden, *Slavery in Dutch South Africa* (Cambridge 1985); R. Ross, *Cape of Torments: Slavery and Resistance in South Africa* (London 1983).

³ For the problem of the testimony of slaves in the Roman empire, see L. Schumacher, *Servus Index* (Wiesbaden 1982).

of law. His attitude clearly reflects a fairly conventional eighteenth century view of the world and was determined by four factors: his own personal background and interest in trade between the Cape and Europe, the ideas of the eighteenth-century European Enlightenment, Tacitus' description of the innocent lives of barbarians unaffected by the vices of civilization (the 'noble savage' topos), and the statutes of the Dutch East India Company.

First, Hemmy's personal background (conveniently summarised in Hewett's prolegomena, pp. xii-xvii) is apparent in his discussion of Christian persecution of pagans, which soon turns into a polemic against the Catholic attempts to suppress Protestants during the Reformation (pp. 45-49)—Hemmy's mother was Dutch and his father was from Bremen in Northern Germany. His interest in promoting trade between Europe and the Cape is particularly evident in his statement on p. 53f. that 'the interest of trade with these people seems to demand this particularly, namely that credence be given to their testimony. . . . For how does anyone make a contract in good faith with a perjured and *intestabilis* man or how do these people accept our people in a trading relationship if they feel they are not only suspected of bad faith by us but also regarded as *infames* and *intestabiles*?' Hemmy's interest in trade is also evident from his earlier description in a speech delivered to the Hamburg Academy of the establishment of a settlement in the Cape of Good Hope by the Dutch to supply their ships en route to the East.⁴

Secondly, Hemmy vehemently upholds the principle of liberty of conscience (p. 48) and consequently adopts an enlightened attitude (for his times) towards pagans who 'are not unbelievers through their own fault' (p. 49). Hemmy's liberal ideas are based closely on the philosophy of the English philosopher John Locke, whose discussion of the relativity of knowledge and culture is paraphrased closely on p. 62.⁵ A comparison between the two texts is instructive. First Hemmy (as rendered by Hewett):

For if, perhaps, that most brilliant of English philosophers, the great Newton, had been born in Saldanha Bay⁶ his thoughts, I am sure, would not have differed much from the thoughts of the Hottentots living there and, on the other hand, if by chance some Hottentot had at that time been born in England, he would perhaps have left the men learned in the science of mathematics, philosophy and astronomy many parasangs behind him [see Locke, *De Intellectu*, 1.4. n. 12].

⁴ K. D. White (tr. and ed.), *De Promontorio Bonae Spei (The Cape of Good Hope): A Latin Oration Delivered in the Hamburg Academy 10 April 1767* (Cape Town 1959).

⁵ For a discussion of the views of the Enlightenment to slavery and race, see D. Davis, *The Problem of Slavery in Western Culture* (Ithaca 1966) 391-482. The attitude of Locke to slavery is discussed by J. Vogt (tr. T. Wiedemann), *Ancient Slavery and the Ideal of Man* (Oxford 1975) 201.

⁶ Saldanha Bay lies just to the northwest of Cape Town.

Next Locke (the reference is in fact to his *Essay Concerning Human Understanding* 1.3.12):

Had you or I been born at the Bay of Soldania, possibly our thoughts and notions had not exceeded those brutish ones of the Hottentots that inhabit there. And had the Virginia king Apochancana been educated in England, he had been perhaps as knowing a divine, and as good a mathematician as any in it; the difference between him and a more improved Englishman lying barely in this, that the exercise of his faculties was bounded within the ways, modes, and notions of his own country, and never directed to any other or further inquiries.

Thirdly, Hemmy describes the Hottentots of the Cape in much the same terms as Tacitus does the Germans in his *Germania*. First Hemmy (p. 62, transliterated): *miseram ambitionem aut avaritiam pectora illis non fervent, quae reliquis mortalibus otium et quietem eripiunt. Libidine non ardent. Invidia haud laborant. Nulla malarum curarum anxietate torquentur. Nullius sceleris conscientia animum mordet*. This is translated by Hewett as follows: 'Their breasts do not seethe with wretched ambition or greed, which disrupts the peace and quiet of other mortals. They do not burn with lust; they do not simmer with envy; they are not tormented with anxiety for evil purposes. No consciousness of crime gnaws at their minds.' Compare Tacitus on the Chauci: *sine cupiditate, sine impotentia, quieti secretique nulla provocant bella, nullis raptibus aut latrociniiis populantur* ('Untouched by greed or lawless ambition, they dwell in quiet seclusion, never provoking a war, never robbing or plundering their neighbours', *Germ.* 35).

Lastly, Hemmy's argument is quite simply based on the *Statutes of the East Indies* which decreed that 'credence must be given' to the testimony of 'Moors (Mohammedans) and Heathen when it is given by honourable people, of good name and repute' (p. 54).⁷ Similarly, the *Statutes* lay down that slaves at the Cape should be allowed to give testimony against their masters in case of cruel treatment: 'It shall be allowed to a bondsman to lay a claim with the Judge or Magistrate if he has been cruelly treated by his master or mistress, provided he has good and significant reason therefor'. Thus Hemmy's thesis closely follows the line of the company for which he worked for most of his life.

The prolegomena to the work do not fully address all the aspects of the work discussed above in this review. Instead the reader is provided with a summary of the contents of the treatise (p. ix), a discussion of the editor's reasons for embarking on the project (pp. x-xii, quoted above), and biographical notes on the life of Hemmy (pp. xii-xvii) including his years in the Cape, in Europe, and in Japan. This section of the edition concludes with bibliographical notes on most of the legal texts on which Hemmy drew (pp. xvii-xix).

⁷ Hewett does not appear to have supplied the bibliographical details for this reference.

The bibliography itself is divided into two sections: legal sources (pp. xxv) and non-legal sources (p. xxii). The first shows that Hewett has made a considerable effort to check the references to ancient, medieval, and later legal discussions of the law of evidence—an area to which she brings considerable experience.⁸ References to legal texts are given in their modern format and the editor carefully notes those citations which are clearly irrelevant to the discussion (cf., e.g., pp. 18-21). The translation is annotated, although too lightly in my opinion (only forty-six explanatory notes are provided and the reader is often left ignorant of important contextual information.)

The second section of the bibliography consists mainly of the classical authors and works that are cited in the thesis (an indication that the translator had non-classicists largely in mind in putting together this edition). In keeping with the usage of his age, Hemmy does not hesitate to quote classical poets and playwrights such as Juvenal, Ovid, Terence and Plautus, prose authors like Cicero and Plutarch, as well as the Old and New Testaments, in his juridical dissertation. While Hewett argues that there is no evidence that the author knew Greek, allusions to parasangs (see the quotation above), the Greek myth of Ariadne and the labyrinth (p. 11), and Plutarch's reference to a woman defending a case in the Roman forum (p. 27), suggest the opposite. Some of these literary citations have regrettably not been properly identified, including Juvenal's *rara avis* (6.165) on p. 31 and the reference to Plutarch mentioned above.⁹ Also cited in this section is the work of the Abbé de la Caille who wrote a historical account of his journey to the Cape in 1751-1753.¹⁰ Some other bibliographical citations are given in the footnotes to the prolegomena (especially n. 6 p. xii). These could usefully have been collected in a third section of the bibliography for the convenience of readers. Again, the references for some works cited, such as Kolb, do not appear to have been given fully anywhere in the work.¹¹

This work is certainly of great interest to academics in a number of disciplines and also potentially to a wide general readership. It is regrettable that the book was not produced by an international publisher. If this had been done, the book would have received greater publicity, some of the unnecessary deficiencies of the present

⁸ Hewett has also translated the three volumes of A. Matthaeus, *De Criminibus* (Cape Town 1996, Cape Town 1994 and Pretoria 1993). Nevertheless, a number of sources (admittedly obscure ones such as Carpoz, Vinnius and Donellus) remain unidentified.

⁹ A further unidentified quotation, which does not appear to be classical but may be based on Cic. *Fam.* 15.6.1, also occurs on p. 43: *plus valent duo Catones turba quam Quiritium*.

¹⁰ An English translation of this work, *Travels at the Cape 1751-1753*, by R. Raven-Hart (Cape Town 1976) is available and could usefully have been cited.

¹¹ P. Kolbe, *Caput Bonae Spei Hodiernum: Vollständige Beschreibung des africanischen Vorgebürges der guten Hoffnung* 1-2 (Nürnberg 1719). This work has been translated by P. Kolb into English as *The Present State of the Cape of Good Hope, or a Particular Account of the Several Nations of the Hottentots with a Short Account of the Dutch Settlement at the Cape* (London 1731) and has now been edited by W. Jopp under the title *Unter Hottentotten 1705-1713* (Tübingen 1979).

edition might have been avoided,¹² and the editor may have been persuaded to provide fuller contextualisation for a very rare and fascinating document in the reception of Roman law and the history of colonialism in South Africa.

THE CLASSICAL IN GREEK ART

Tom Stevenson

Department of Classics and Ancient History, University of Auckland
Auckland, New Zealand

Mark D. Fullerton, *Greek Art*. Cambridge: Cambridge University Press, 2000. Pp. 176, incl. 79 colour illustrations, 34 black-and-white, 7 line drawings and 1 map. ISBN 0-521-77973-1. GBP11.95.

The title of this book is slightly misleading, especially in view of the accessible format and wealth of colour illustrations. Instead of being an introductory book on Greek art that might be suitable for beginners, it is more about concepts of 'Classical' art, challenging widely held assumptions, arguing in particular that the organic model of growth which underlies most descriptions of the development of Greek art is misleading in the emphasis it places upon Classical art as a 'mature' period and in the way it implies a single, pure, identifiable, Classical style. It is a book for more mature students and their teachers. I found it interesting, well written and generally persuasive.

In addition to the introduction, there are five chapters, each of which begins by examining an aspect of the Parthenon sculptures. Fullerton explains his approach on pages 10f.:

Rather than suppress or deny the central role of the Classical in our understanding of ancient Greek art, this book instead pushes that centrality to the foreground. The ambiguity inherent in the term classical is exploited, since this text uses the term Classical narrowly defined (as the period 480-323 BC) to explore certain common features of the term classical broadly defined (as Greek and Roman culture generally). In the . . . introduction, I shall present an

¹² For example, the printer has mangled the right margin of p. 50 (the author supplied a corrected page). The rather stilted translation (but legal texts are hardly stylistically elegant) should be evident from the passages quoted in the course of the review. Note further that *mei Amantissim[us]* in the *Oratio* is inappropriately glossed as 'most beloved by me' rather than 'most fond of me' or perhaps 'my very dear friend' (tr. K. D. White). Typographical errors certainly exist, though these are relatively rare; cf., e.g., 'are know for treachery' (p. 64); 'the interface . . . These are a major source . . .' (p. xi); 'Constantiople' (p. xviii). In addition, rather more help was needed with Hemmy's Latin text, its idiosyncracies (*emti*, p. 65; *paean*, p. 64) and patent errors (*confirmaverinr*, p. 67).