

BMCR 2018.10.49

Ancient Greek Law in the 21st Century. Ashley and Peter Larkin Endowment in Greek and Roman Culture

Paula Perlman, *Ancient Greek Law in the 21st Century. Ashley and Peter Larkin Endowment in Greek and Roman Culture*. Austin: University of Texas Press, 2018. ix, 228. ISBN 9781477315217, 9781477315712 ebook.

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Preview

[Authors and titles are listed at the end of the review.]

This volume is intended to assess the state of Greek law scholarship in the 21st century, and is divided into four (unmarked) sections according to the approach to their subject. In the first, key debates in the field of Greek law are reassessed. Robert W. Wallace tackles the apparent Athenian preference for procedural over substantive law, offering the explanation that the lack of a more general procedural law required that procedures be outlined in each case, while the matter of the offence was more properly contained to the indictment. He then argues that Athenian law was primarily shaped by the concerns of the democracy. Eva Cantarella addresses the issues of revenge and punishment as the intended outcomes of an Athenian trial, and reinforces the argument that Athenian litigants were aware of the conceptual difference between the two, and were not solely motivated by a desire for revenge. Michael Gagarin approaches the question of the Athenian law on contracts (or “agreements” in Gagarin’s formulation), arguing that the law applied to all agreements (understood to be voluntary by nature) and that illegal agreements were practically unenforceable and therefore not binding. He then applies this to a reading of Hyperides *Against Athenogenes* to argue that the facts are at issue in the case, not the law. Edward E. Cohen returns to the issue of slave-owned businesses previously addressed in his work on Athenian banking, reasserting his view that enslaved business owners were liable for their own debts. Through comparison with the Roman system, he argues that the Athenian conventions of credit worked alongside this legal liability.

In the second section, the authors explore some understudied subjects and periods, and outline potential future directions for exploration. Alberto Maffi addresses the question of “public” and “private” law, showing a preference for the concept of the “rule of law” over the power of the democratic assembly. He then searches for “administrative law”

in Athens, which he concludes is difficult to identify, and explores the role of the actions of institutions and individuals in the public interest. Martin Dreher's chapter on "sacred law" and Lene Rubinstein's on summary fines will be discussed in more detail below.

Complementing these new topics, in the third section explores new methodologies, drawing on modern legal scholarship. Julie Valissaropoulos-Karakostas explores the value of seeking "soft law" in the legal systems of ancient Greece, meaning rules not established by formally identified law-making bodies. She indicates the rise of a form of "globalisation" after the death of Alexander, and suggests that forms of soft law might be found in the incorporation into law codes of royal decrees, local laws in areas outside of Hellenistic kingdoms, and customs in international relations. Adriaan Lanni summarises the value of previous anthropological approaches to Greek law and promotes the complementary use of sociological principles to further advance the field, primarily the economic analysis of law and social norms theory. Mogens Herman Hansen returns to the question of whether oral law existed in Greece prior to written law; his contribution will be discussed in more detail below, alongside the only contribution in the fourth and final section, Gerhard Thür's essay on the importance and method of teaching oratory in contemporary universities.

As a whole, the volume provides a succinct and learned overview of modern thinking on issues that have been debated since the subject flourished in the 1970s, and includes some convincing and innovative readings. The volume successfully draws together both the Anglophone and continental European traditional approaches to Greek law, that is, approaches from both social and legal perspectives, as well as proposing entirely new approaches. The volume's focus on issues of critical debate results in some areas of the field remaining unaddressed, though this does not lessen the volume's immense value. As with many discussions of "Greek law," due to the state of the evidence, a majority of the papers take Athens—particularly Athens in the classical period—as their primary area of exploration. The papers in the first section build considerably upon, and thus rely heavily on, knowledge of the work of previous scholars, and so would perhaps be of less use to the desired broader audience identified in the acknowledgements (p. ix). In general, though, the volume will be a great resource for students, established scholars, and indeed teachers of Greek law. As the volume contains eleven substantial chapters, I limit my more detailed discussion to highlighting some of the most persuasive and innovative contributions.

Martin Dreher's chapter takes a fresh approach to the often neglected topic of sacred law in Greece. He begins with the important question of terminology, which has not been standardised by scholars. He identifies sacred law as part of the law of the *polis*, rather than a separate entity, and divides it into two categories: sacred legal forms, which are sacred elements incorporated into the wider law of the polis such as laws on impiety, and sacred laws, which are laws (broadly understood) relating to the regulation of the religious sphere. His categorisation is convincing and thorough, providing useful terms (both in English and German) that tie together previous definitions in a more productive and accessible way. He proceeds with a discussion of the role of gods in law, concluding that they were seen in some ways as "juridical persons" in charge of the places regulated by sacred laws (p. 91). He then provides useful surveys of forms and, crucially, the enforcement of sacred law, demonstrating that sacred laws could include

sanctions, particularly fines, and that divine punishment also played a role in their enforcement. In a section looking forward to future research, Dreher identifies the need to examine the role of magic in legal matters, such as curse tablets, as well as to consider the influence of contexts of democracy and oligarchy, war and peace. The chapter is an impetus to study Greek sacred law in a more cohesive, coherent way moving forward, accounting for the full range of evidence available.

Lene Rubinstein's contribution on the imposition of summary fines in Greek law is the longest and perhaps the richest in the volume. Her chapter provides the most extensive discussion of Greek law outside of Athens, extending beyond the period and sources of other discussions, and taking as her primary evidence inscriptions both from the Hellenistic and Classical periods. Her main point is a methodological one, which questions the fact that many inscriptions on this matter lack details about how the prescribed fines should be imposed, and by whom, as well as how guilt was determined. Her survey of the sources is thorough, taking each individual example in depth and then drawing comparisons. Her conclusions suggest that the imposition of summary fines varied little between democratic and oligarchic communities, and that in many cases the reasons for the use of summary fines were "practical rather than ideological" (p. 128), relating to the effective control of mass gatherings of citizens for political or religious reasons, potential abuse of public officials going about their business, and small-scale offences for which a trial would be an impractical waste of resources. Most compellingly, Rubinstein's chapter suggests an aspect of law that was reasonably consistent across the Greek world, and thus could feasibly be classed under the category "Greek law." Her valuable approach takes a more holistic view of the sources while allowing for the methodological problems intrinsic to epigraphical material. One hopes that the study of Greek law will continue to expand extensively beyond the bounds of classical Athens.

In his chapter, Mogens Herman Hansen returns to the question, raised in detail in Michael Gagarin's books *Early Greek Law* and *Writing Greek Law*, of the existence of a system of oral law in Greece prior to the written system. Gagarin argued that, due to an intrinsic connection between law and writing, oral law cannot exist as such, and therefore the ancient Greeks did not have oral laws that differed from customs or traditions. Hansen, however, here presents a number of convincing parallels from different locations and time periods that clearly demonstrate the potential success of a system of oral law, as well as illustrating how such a system is transformed by the introduction of writing. Hansen also provides examples for the human ability to remember abnormally large amounts of detailed information; although his examples here are less compelling, he makes the valuable point that while such people are considered curiosities in modern societies, in a more oral society their skills would be prized. He ends his chapter by addressing the lack of evidence for oral law in ancient Greece in conjunction with examples from societies where the evidence for oral law is extremely slim, but does exist. These case studies are particularly illuminating in demonstrating how and why so little evidence is preserved of their existence; in some cases, we are aware that an oral system preceded the written system only because it is referred to (often briefly) when the laws are enshrined in writing. As a result, the chapter provides an essential counterargument to Gagarin's position.

Gerhard Thür's contribution, the last in the volume, is perhaps the most forward-looking, as indicated by its title, "The Future of Classical Oratory." His introduction draws attention to the contemporary value of teaching classical oratory as a route into the study of rhetoric and communication. He highlights the strongly visual nature of much modern rhetoric, taking architecture as an example, and makes a fruitful comparison between the images that may accompany a modern speech and the various *atechnoi pisteis* of Athenian rhetoric. He then turns to explore the issues of lying and manipulation of the facts in Greek oratory, laying out his theory of the logographers' ability to "isolate the facts": that is, to present facts in such a way that they are divorced from their true context and therefore create a false impression. This is an incisive method of approaching the speeches, and surely more accurate than one that presumes that speakers could get away with outright lies. The chapter demonstrates its currency further by presenting as one of its examples the rather recently discovered fragment of Hyperides' *Against Timandros*. Perhaps the most interesting part of Thür's chapter is his account and interpretation of his method of teaching Greek oratory by working with students to prepare and then perform an Athenian-style moot court over the course of a term. He notes that this gave the students the opportunity to learn about Athenian oratory in theory and through both its writing and performance, as well as to practice communication more generally. Teachers of oratory could learn from such an approach, which surely makes the subject more actively engaging for students, as well as fitting it in more successfully with the liberal arts model already common in the USA and increasingly seen in UK universities as well.

Authors and Titles

Adriaan Lanni and Robert W. Wallace, Introduction

Robert W. Wallace, Administering Justice in Ancient Athens: Framework and Core Principles

Eva Cantarella, Revenge and Punishment

Michael Gagarin, Hyperides's *Against Athenogenes* and the Athenian Law on Agreements

Edward E. Cohen, Slaves Operating Businesses: Legal Ramifications for Ancient Athens—and for Modern Scholarship

Alberto Maffi, Toward a New Shape of the Relationship between Public and Private in Ancient Greece

Martin Dreher, " *Heiliges Recht* " and " *Heilige Gesetze* ": Law, Religion, and Magic in Ancient Greece

Lene Rubinstein, Summary Fines in Greek Inscriptions and the Question of "Greek Law"

Julie Velissaropoulos-Karakostas, Soft Law in Ancient Greece?

Adriaan Lanni, From Anthropology to Sociology: New Directions in Ancient Greek Law Research

Mogens Herman Hansen, Oral Law in Ancient Greece?

Gerhard Thür, The Future of Classical Oratory