UNIVERSITY OF BELGRADE
SCHOOL OF LAW

REVIEW: MICHAEL GAGARIN – DAVID COHEN, THE CAMBRIDGE COMPANION TO ANCIENT GREEK LAW. CAMBRIDGE UNIVERSITY PRESS, CAMBRIDGE 2005, XIII+480 S.)

BY

SIMA AVRAMOVIC

Univerzitet u Beogradu
PRAVNI FAKULTET

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When Cicero went to Greece afraid of Sula's anger after his successful speech *Pro Sexto Roscio Amerino*, he studied oratory with Apollonius at Rhodes, and asked him to evaluate his way of speaking. When Cicero finished his speech Apollonius was silent for long, and said finally: "You have my praise and admiration, Cicero, and Greece my pity and commiseration, since those arts and that eloquence which are the only glories that remain to her, will now be transferred by you to Rome".[1] Facied with this book European scholar in ancient Greek law may experience a similar feeling to the one of Apollonius in the episode with Cicero. The volume clearly attests that the center of research in the field has been moved during few last decades to the Anglo-American hands, who have published a few dozen of book-length contributions related directly or indirectly to ancient Greek law.

Why has such a change occurred so visibly and dramatically? The reason is not only the increasing interest for a different, multidisciplinary approach and methodologies applied by Anglo-Americans (as suggested by D. Cohen in his excellent introduction to the book), but also in substantial changes that have affected legal education in Europe, suppressing Roman law and legal history in the interest of more pragmatic educational goals. As European law professors had been chief holders of the discipline for decades (while champions of the Greek law scholarship in the common law countries are mainly classicists, historians, anthropologists, sociologists, etc.), devaluation of their subjects in law schools curricula displaced experts in Roman or ancient Greek law to new teaching areas and fields of research. Not many newcomers are so enthusiastic to make efforts in the field not properly recognized anymore in their academic institutions and surrounding.

A kind of evidence of the change is the present book, which is basically a collection of 22 essays (chapters of the book), introducing readers into different issues of ancient Greek law. It was edited by two most prominent American scholars and undisputable leaders in the field, Michael Gagarin, Professor of Classics at the University of Texas, Austin and David Cohen, Professor of Classics and Rhetoric at the University of California, Berkeley, who were pioneers of ancient Greek law studies in the USA. The proportion of contributions written by Anglo-American and continental scholars is also significant enough (17:5), being not a result of a "discriminative" policy of editors: they gave room to leading scholars for specific topics. Therefore the volume is also a kind of a resume of Greek law studies development and of prevailing contemporary views. It is precious both for non-expert newcomers to the field and for specialists. Newness is an important theme here, both for interpretations provided and evidence used, and for techniques of analysis. The book will by all means inspire and mark many future research in the field, particularly in the methodological sense, so that it seems to be a kind of landmark for the 21st century studies of ancient Greek law, similarly as the work of Lipsius was for the 20th.

Programmatic and profound introductory chapter by David Cohen (1-26) represents much more than a standard preface. It is both an accurate, substantial review of contributions in the volume and a lucid, original analysis of changes that have occured in the discipline. These changes are not connected only to dislocation of Greek law studies into common law countries but, much more substantially, they imply an important methodological transformation. Interdisciplinary approach became predominant, while study of ancient Greek law grew to be more vivid, attractive and multifaceted by raising new questions examined from a wide range of perspectives, viewed in its social, political, cultural, historical, anthropological and other contexts,

[1] Plutarch, Cicero 4.

and not predominantly through dogmatic legal analysis of rules. No wonder, as the most of non-continental contributors are not lawyers, but historians and classicists.

The first part of the volume named *"Law in Greece"* begins with a short, but very far-reaching and essential contribution by Michael Gagarin *"The Unity of Greek Law"* (29-40). He examines one of the most controversial and fundamental issues of ancient Greek law studies – whether one can speak about the Greek law or it is more proper to give account of legal systems of particular city-states primarily, without further generalizations. Apart from well known and much discussed *pro et contra* arguments, obvious tendency is that modern common law scholars incline to avoid the notion of Greek law, particularly in titles of their books.[2] It is basically the influence of Finley's criticism of Mitteis' standing that laws of different *poleis* rested on the same juristic conceptions.[3] On the contrary, most continental European scholars use the notion of Greek law nearly without hesitation, relying on H.J. Wolff's and A. Biscardi's argumentation that a certain fund of common institutions in different city-states proves a sort of unity, notwithstanding different legislations and political settings in particular city states.

In his paper Gagarin takes a very original position: he basically accepts Finley's standing, and demonstrates (by comparing rules on family law and legal position of women in Athens and Gortyn) that in substantive law "the more detailed our knowledge becomes, the more clearly the differences stand out". However, he introduces a balance by arguing that in the same time "common cultural heritage would necessarily manifest itself in some way in the legal systems of the different *poleis*", and goes even beyond: he has shown through a brilliant analysis that a kind of essential unity of Greek law is reflected at least in legal procedure. He defends an idea of "general procedural unity" by pointing out to a set of common characteristics in Greek *poleis* in procedural matters, such as the role of oral argument and debate in the judicial process, the free judicial decisions by judges or juries, the minimal role of formalism and "automatic proofs" (such as oaths) that determine court decisions without substantive interfering by judges, the proliferation of publicly displayed written laws, the concern for procedure expressed in these laws, the relative absence of writing during the legal process itself, the lack of professionalization in law.

In that way Gagarin has effectively contributed to both schools of thought – he confirms Finley's thesis in substantive law, while in the procedural matters he is launching a new and very sound pro-unity argumentation. In the same time he finds that acceptance of the "unity theory" can be an excuse for a method of filling gaps (due to sparse direct evidence for Greek law) by comparative approach, as a means of reconstructing laws of a certain city-state by data from another. On that point one might partially disagree, as acceptance of the Greek law unity view among continental scholars was rather more influenced by strong impact of the historical school idea of *Volksgeist* (rather than by a pragmatic need to fill gaps in our knowledge), and as the concept of "spirit of the people" became deeply implanted into many generations of scholars. Out of the same reason one is entitled to speak e.g. about German law, notwithstanding sharp differences exist among customs and laws of particular German

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[2] Harrison, MacDowel, Todd, Catrledge-Milett-Todd, D.Cohen, Just, Ostwald, Stroud prefer to use terms like "Athenian law" or "Spartan law", with rare exceptions like Pringsheim and Sealy.

[3] M. I. F i n l e y, "The Problem of the Unity of Greek Law", La storia del diritto nel quadro delle scienze storiche (Atti del primo Congresso Internazionale della Società Italiana di Storia del Diritto), Florence 1966; L. M i t t e i s, Reichrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs: Mit Beitragen zur Kenntniss des griechischen Recht und der spätrömischen Rechtsenwicklung, Leipzig 1891, 62.

tribes, e.g. appearing most evidently in inheritance law of Salic Francs and Lombards. When speaking about Greek law, one should not also neglect convincing and influential argumentation in favor of unity, such as common religious background, existence of similar legal tradition and institutions (particularly e.g. "*epiklerate*"), common cultural heritage, legal transplants, and many other amalgamating factors of the certain kind of Greek law unity.

In any case, fundamental contribution by Gagarin gives a strong push in re-thinking one of the basic notions in Greek law studies. He offered a new methodological approach based not only on detailed comparison of features of certain institutions in different *poleis*, but on a deeper substantial analysis of more general principles on how the legal system and law operated in different Greek societies. From now on, after Gagarin's paper, scholars will be obliged to be more cautious in comparing laws of different city-states.

In the next chapter *"Writing, Law, and Written Law"* (41-60) Rosalind Thomas (Ancient History Fellow at Balliol College Oxford) examines a few interesting topics, such as the role of early Greek laws and lawgivers, the importance of writing down the law and problems that arose out of it, the close connection between written laws and the bodies which put them into action. She focuses on the character and significance of the written laws in archaic Greece, their relation to earlier forms of rules and the ideals surrounding written law in classical Athens. She gives a useful overview of surviving written laws and fragments of law from ancient Greece, and re-examines an old dilemma of legal historians whether written law fixes previous customary rules or introduces legal changes, does it "replicate or 'codify' previous practices or produce radical new rules". She comes to conclusion that writing gave permanence, stability, security, importance, even divine sanction to the law, and inhibited changes even when they were necessary. There are also some interesting findings on subject matter and form of early laws, particularly those that consider the impact of social and political relations, as well as observation that inscribed laws were not, on the whole, setting up political institutions.

However, as to the main problem of the relation between previous unwritten and written law, it would have been useful if the Greek case was examined in a wider comparative context, as there are plenty of important findings and conclusions in the broad scholarly literature on codification issues (particularly taking into account Near Eastern and Roman law).[4] Thomas also takes for granted that it is "often held, particularly by modern lawyers that law must, by definition, be written down". Therefore many of her conclusions, being sometimes based upon incomplete insight into law and legal history, seem to be obvious and notorious, including the main underlying idea that the written law was the basis for the development of democracy, that there was a large body of assumptions and traditional customs that lay behind written laws and that "before written law there were 'unwritten rules' or norms and customs, and even after some laws were written, others remained unwritten", that codified rules were usually not the ones agreed by all, but those that constantly caused trouble, that early written law was closely bound up with religious sanctions, etc.

In an attractive and instructive paper *"Law and Religion"* (61-81) Robert Parker (Professor of Ancient History in the University of Oxford) examines different aspects and many important sources on the relation between law and religion in

[4] Books like those by N. S e a g l e, The History of Law, New York 1946; A. S. D i a m o n d, Primitive Law, London 1950; A. S. D i a m o n d, Primitive Law, Past and Present, London 1971; V. K o r o š e c, "Keilschriftrecht", Handbuch der Orientalistik, Erste Abteilung, Ergänzungsband III (1964), 49 – 219 and many others seem to be unavoidable.

ancient Greece, drawing particular attention to so called “sacred laws”. He observes that the very expression might be misleading, as most of these laws were basically secular in form and adopted by the citizen assembly. He thoroughly analyses cases of impiety, temple robbing, wrongdoing concerning a religious festival, and theft of sacred money. In connection to impiety he raises an interesting question, although it sounds a bit anachronistic, on religious tolerance and freedom of religious thought in Athens. A very important part of the contribution is the one inspired by the 1930’s famous book *Heiliges Recht* by Kurt Latte, and with his views on the sacral elements in legal process. Through meticulous analysis of different kinds of oaths in Gortyn and Athens, role of sacred fines and curse, he refutes Latte’s evolutionary approach and interpretation of sacral legal norms, particularly on ground of sacral manumission features.

Another short and precious study by Michael Gagarin *“Early Greek Law”* (82-94) is in certain aspects related to his famous book of 1986 with the same title, but with some new issues included this time. In the first part of the contribution dedicated to legal procedure Gagarin analyzes three pieces of evidence from around 700 B.C. (the famous Homeric trial scene on the shield of Achilles, the king’s persuasive skills in settling disputes in the Hesiod’s *Theogony*, and the vague story of Deioces, the first king of Medes, who became famous in resolving disputes according to Herodotus, I 96-100). These examples provided a satisfying ground for him to reach conclusions on some features of archaic procedure: that the process would begin with a mutual wish of disputants to seek settlement, that it was held in public, and that the dispute was expected to be resolved by non professional judges. In the second part of the paper Gagarin challenges Thür’s standing that judges in Homeric and early Greek law were restricted in the kinds of settlement they could propose, and he also criticizes comparative method in general as used by Thür and many Greek scholars before him, claiming that today “belief in universal pattern of human social development has largely vanished”. His arguments that judgment did not consist of oath and that *dikazein* simply denoted “to propose a judgment” seriously put in question Thür’s position, but I disagree with Cohen’s statement expressed in the introduction that Gagarin has demolished it. The issue remains open for further, more elaborate discussions.

Also, one cannot avoid to make a comment on a very important, far-reaching and serious standing that Gagarin has taken regarding the values of comparative method. I would be more hesitant in criticizing it so sharply, particularly in its traditional form that similar solutions often arise for similar situations in different societies. Gagarin admits that early Greek procedure resembled the process we find in some preliterate societies, such as the Tiv in northern Nigeria. I would also welcome any future study of dispute resolution in so called *panchaiet* courts in India in relation to archaic Greece, as it could be very instructive for a better understanding of early Greek process. The real question is not about *pro* or *contra* comparative method, but how it is to be used, what expectations and what kind of results one might anticipate out of it. If it is considered as an additional argument and a slight, non binding suggestion, a kind of temporary road sign that some legal institution or feature might have been similar in alike societies, conclusions that arise out of it can be useful orientation until eventual new sources offer more decisive arguments. Comparisons with Middle Eastern or African primitive (in Diamond’s sense) legal systems can present the problem in a broader anthropological context. Coming back at this point to the question of comparative method in Greek law in general, it seems that comparative material from Roman law or other Greek city-states can be at least as

relevant as the one coming from distinct and more different societies. This standing is not the result of the idea of the unity of Greek law. It arises out of belief in the value of comparative method and its reach in legal history that generations of scholars have been developing, including the direction, results and profits gained in works of Alan Watson during last decades.

In any case, Gagarin's second valuable contribution to this book confirms his leading and innovating position in current Greek law scholarship, and completes his very coherent picture of early Greek law, and of Greek law in general, as of a publicly oriented legal system, based upon written legislation, oral procedure and open debate in settling disputes.

The second part of the volume *"Law in Athens I: Procedure"* starts with the contribution coming from Stephen C. Todd (Reader in Classics at the University of Manchester), who wrote the most successful recent book on Greek law. In the chapter *"Law and Oratory in Athens"* (97-111) he focuses on many fundamental, but quite rarely raised questions, related to court speeches as our dominant source of Athenian law. Todd's smart methodological warnings are intended to remind Greek scholars that law court speeches are precious, but a dangerous source, in a similar way as Hans Julius Wolff pointed some thirty years ago.[5] He rightly accentuates that available speeches have survived mostly due to the prestige of the speech-writers (logographers) or to a chance, so that "patterns of survival have implications for the use of the speeches as historical evidence". Todd lists many causes that may effect distortion due to unrepresentative survival, like one-sided nature of speeches (as we usually do not have the opponent's arguments), our ignorance of the outcome and reasons for jury decision, the character of the relationship between a logographer, litigants and their witnesses, the problem of authenticity of the documents used in speeches, the neglect of the importance of pretrial procedures, the possible discrepancy between delivered speech and its later redaction that made its way to us, etc. He also denies some stereotypes, e.g. on the degree of audience participation or on the total absence of cross-examination, as litigants had the power (formal or factual) to seek response to direct questions. It might be strange that students' simulation of Athenian court procedure can offer surprisingly interesting results in defining very similar questions and findings on the level of psychological reactions and relations among participants during the Athenian mock trial.[6] Todd went far beyond the frequent story about the importance of court speeches and oratory in the Athenian process. He has rightly pointed to many consequences of persuasiveness and rhetorical skill in litigation in front of non-expert jury as well as of some technical but very important issues, all quite neglected up to now.

In *"Relevance in Athenian Courts"* (112-128) Adriaan Lanni (Assistant Professor at the Harvard Law School) investigates inventively the character of extralegal and "irrelevant" (from a modern point of view) arguments in Athenian court speeches. She convincingly challenges the attitude that extralegal arguments attest that litigants were engaged in a competition for honor and prestige unrelated to the "ostensible subject of the dispute". She offers an excellent in-depth analysis of three major sorts of so called irrelevant arguments - circumstances of the case and its

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[5] H. J. W o l f f, "Methodische Grundfragen der Rechtsgeschichtlichen Verwendung attischer Gerichtsreden", Opuscula Dispersa, Amsterdam 1974, 27.

[6] This educational tool is developed for now at the law schools at Harvard, in Graz and in Belgrade. For more details see S. A v r a m o v i c, "Simulation of Athenian Court – A New Teaching Method", Dike, Rivista di storia del diritto greco ed ellenistico (Milano) 2002/5, 187 – 194.

broader social context (particularly long-term relationships and interaction of the parties, significance of breach of friendship – *philia*, claims for fairness and justice), appeals for the jury's pity based on the potential harmful effects of an adverse verdict, and nearly omni-present arguments related to the character of the parties. She shows very convincingly that non-legal arguments have had completely different significance and justification than in modern procedural perception, and that amateur litigants helped in that way the lay judges in reaching their verdict, rather than providing ammunition in a contest for honor. Her sense for the fine distinctions and her cautious approach have led her to the finding that this was not a general feature of the legal process in Athens: she points to exceptions in homicide and maritime cases, which had been characterized by more formal legal approach due to their peculiarities, where irrelevant nonlegal statements had been extremely limited. A very important and acceptable final conclusion is that the liberal use of extralegal arguments (particularly those from character) reflects a specific, highly contextualized and individualized mode of decision making and of justice comprehension in the Athenian popular courts.

Lene Rubinstein (Reader in Ancient History in the Department of Classics, University of London) wrote an excellent specialized and refined study *"Differentiated Rhetorical Strategies in the Athenian Court"* (129-145). In her highly analytic paper, more oriented to an expert auditorium rather than to ordinary readers, she examines to what extent the choice of a certain procedure (often available to plaintiff in the Athenian law) affected the rhetorical strategies employed by the litigants. Also, does the nature of the dispute affect expectations on how should a litigant present his case and does the difference between "private" and "public" actions (*dike* and *graphe*) affect different approaches of parties. In answering those quite neglected basic issues, she has offered many innovative ideas, based upon thorough and detailed examination, even of statistical nature, of survived court speeches. She has found at least three new areas, not noted before in the literature, where the choice of procedure and the nature of the dispute influenced the litigants' approach and strategy in pleading the case. The first is appeal to the judges to display anger at the defendant's behavior, the second is use of penal terminology as outcome of the case should be an act of punishment, and the third is insisting on the educational role of the court and expected goals in general prevention.

Through a miniature, but very proper and credible control test she clearly points that none of these three strategic claims appeared in *diadikasia* cases. Argument of anger, punishment and educational function of the court, as rhetorical *topoi*, were basically reserved, in accordance with a kind of "court etiquette", to public rather than to private actions and cases. Therefore, in conclusion, she favors a more nuanced and less generalizing approach to notions like "Athenian litigation" or "Athenian forensic rhetoric", as their meaning may vary depending on the character of a particular case.

Gerhard Thür (Professor of Roman Law and Ancient Legal History at the University of Graz), a leading European expert in ancient Greek law, in the study *"The Role of the Witness in Athenian Law"* (146-169) has brilliantly shown advantages of traditional, basically normative methodology, particularly when combined with some elements of contextual explanation. Detailed analysis of sources and reconstruction of procedural rules and legal norms regulating the role of witnesses has resulted in many new conclusions. Thür defends the point that among many "nonartistic proofs" mentioned by Aristotle in his *Rhetoric* (laws, witnesses, contracts, slave statements under torture, oaths) only witnesses had legal significance in

Athenian courts. He claims that aside from a few regulations on witness testimony, Athenian law had no legally specified rules of evidence, and that only that type of evidence was used directly in the procedure before the jury courts. Thür observes particularly the few rules governing the testimony of witnesses. First of all he points to rules on witness qualification, claiming that limitation of witness capacity to free adult males restricted the search for truth, while in the same time witness testimony was the only enforceable means of discovering the truth in court. Written testimony, introduced into Athenian legal system after 370s, markedly did not promote discovery of truth. He tried to reconstruct the witness formulas, and came to a provocative (and vulnerable, in my opinion) new conclusion that a fixed formula was also used in the period of oral testimony, so that witnesses never recounted events in their own words, and were never cross-examined. Thür introduces a very interesting and innovative terminological distinction of the phases of procedure. In the "dialectic stage" (denoting both types of preliminary hearings – the *anakrisis* and the public arbitration) litigants exchanged questions and answers, while witnesses were only obliged to appear and decide whether they will swear an oath at once saying that the statement prepared by a litigant is false (*exōmosia*) or they will corroborate that statement in the main trial. The second, "rhetorical stage" dealt with the main trial and "a battle of speeches", when a witness can only confirm or not confirm a formulaic, short testimony written in advance during the first stage, sealed and kept in the clay jar (*echinos*) until the main trial. Thür also offers a new finding that *exōmosia* sworn before the jurors in the main trial is not attested, as well as that the witness must approach the speaker's platform and show himself in person to the jurors. At the end Thür re-examines and mainly accepts some results by S. Humphreys, D. Cohen, S. Todd and L. Rubinstein regarding different aspects of the role of witnesses. His main general conclusion is that witnesses in Athens did not serve as an instrument for judicial truth finding, but that they were {from a legal perspective} helpers of one of the litigants. With his both informative and analytic, highly sophisticated essay Thür has significantly contributed to contemporary scholarship, and most probably provoked further discussions of the role of witnesses in Athenian court procedure.

David Cohen, one of the editors of this volume, is also the author of two very valuable studies. As a leading expert in Athenian law, he is particularly famous for his extraordinary knowledge of and contributions regarding the Athenian criminal law. In his first study with a philosophical background *"Theories of Punishment"* (170-190) he examines patterns of thinking by several Greek philosophers, in comparison with the views of their historical and modern counterparts. He paints vividly Protagoras, as he appears in the Plato dialogue, as an outstanding philosopher who strongly opposed the old sentiment of revenge, retribution and *lex talionis* mentality, thus prominently promoting the forward-looking attitude – that punishment should only be inflicted "for the sake of the future", favoring both specific and general deterrence and prevention (of the wrongdoer to do wrong again and of other members of the society). Wrongdoers should be educated and reformed, but if this fails, according to Protagoras, public interest should prevail and the "diseased" member must be banished from the polis or put to death as "incurable".

His next source is Thucydides, who confronted positions of Cleon and Diodotus after the city of Mytilene had been captured, thus contrasting two opposite Greek theories of punishment. Cleon favored retributive arguments, while Diodotus (Thucydides) argued that fear of punishment and deterrence gives no result due to human nature. Isocrates and Plato (mostly in *Gorgias, Protagoras, Republic,* and *Laws*) incorporated legal punishment into a larger framework of education and

socialization, arguing forward-looking perspective on prevention. Similarly to Protagoras, Plato also argueed in favor of the curative approach, but if the "disease" resists, he also accepted death penalty as an ultimate measure. The interest of the polis should prevail. D. Cohen has convincingly shown that in their political discourse Greek theories on punishment basically identified justice with the interest of the demos or polis.

Harvey Yunis (Professor of Classics at Rice University) in *"The Rhetoric of Law in Fourth-Century Athens"* (191-208) examines how rhetoric became the primary instrument of the judicial process and how rhetoricians spoke about the law. He stresses that in an Athenian trial it was impossible to distinguish between law, politics, ideology, and the litigant's style and personality. A trial was a rhetorical contest and included no independent norm regulating what litigants were supposed to say, so that a constant possibility existed that they could pervert the law, dupe and manipulate the court. Therefore he points to frequent rhetorical appeal of speakers to the jury to have in mind the intent of the lawgiver, using often rhetorical *topos* of jurors' identification with the legislator, as well as the *topos* of the welfare of the polis and democracy, as a primary goal of court decisions and statutes. A broad-brush approach occasionally leads the author to over-statements and the skimming over a number of controversies. With a bit anachronistic approach to some aspects, particularly in his understanding of due process of law in Athens, Yunis concludes that speakers introduced the law in their speeches not to make argument about the legal or statutory basis of the case, but to develop in the jurors a feeling that will move them to decide in their (the speaker's) favor, for the sake of the community as a whole. This kind of persuasive justice, as I would call it, was definitely an important feature of the Athenian rhetorically affected procedure, and that is why Bicardi was talking about a kind of "insensibilità giuridica" in the Athenian court speeches.[7] However, to what extent legal aspects of the case were covered and dominated by rhetorical demands is an open issue for further debates.

The third part of the volume dedicated to *"Law in Athens II: Substantive Law"* begins with the second contribution by David Cohen titled *"Crime, Punishment, and the Rule of Law in Classical Athens"* (211-235). It is in a way connected with his previous study on theories of punishment, but he turns here from a rather philosophical level to a more legalistic, but still quite theoretical one. The story is very much about the basic questions on the very nature of criminal law in Athens, many of them ignored up to now. They are about essential notions, such as what was a conception of crime and criminal in Athens, to what extent these conceptions correspond to modern notions, was conception of punishment distinctive and opposed to other kinds of legal remedies, etc. One of his principal points is that Athenians clearly had a kind of understanding of "criminal law" in the sense that they regarded certain kinds of wrongs (such as *hubris*) as harming or threatening not just to the victim but also the community as a whole. It requires punishment by an impartial judgment in the name of the polis and of the public interest. However, differently than in modern understanding, public harms and punishments were enmeshed within a political and legal system which had strongly identified and unified interests of the prosecutor (having in mind private initiative in prosecution), the law, the judges, the demos, and the polis.

The role of private enmity in public litigation, the reliance on self-help in punishing wrongdoers in certain cases, and particularly the role of political power in

[7] A. B i s c a r d i, Diritto greco attico, Milano 1982, 27.

punishing, made criminal law an instrument to preserve the political order and exercise of political power (sounds a bit Marxist!), and differ sharply from our own understanding of justice, crime, punishment and rule of law in democratic Athens. In any case, the innovative contribution by D. Cohen has offered answers to many neglected fundamental questions and has opened a number of new ones, as a road sign for further examination of Athenian criminal law and Athenian law in general. One of the most important and unavoidable results of this study is the refined distinguishment of the notion of rule of law in the Athenian context from its modern usage. Cohen in a way tacitly warned against anachronistic use of this notion, as it had a different background and more fluid content in ancient Athens.

Eva Cantarella (Professor of Roman and Greek Law at the University of Milan Law School) offered in a remarkable chapter *"Gender, Sexuality, and Law"* (236-253) text that fits well to the title of the volume and probable expectations of an average reader. It is a perfect overview of the topic, accurate in exposing recent progress in scholarship on gender, sexuality and legal position of woman in Athens. She firstly presents a historical development of legal and social treatment of woman from Homeric epics, Draco's law, archaic age, up to the age of orators, pointing to the constant division of women to the "honest" ones and "the others". She gave an important contribution in challenging Lysias' information (mentioned in the defense of Euphiletus, Or. I) that the penalty for rape was a fine, and death for adultery. Cantarella convincingly demonstrated that woman's consent in that context had no relevance *per se*, and that the punishment for adultery was not fixed and dependent on *graphe moicheias* judicial outcome, while rape could led the rapper to death by means of *graphē hybreōs*. In the second part she systematically exposes and accurately analyzes rules dealing with marriage, inheritance and economic rights of woman, taking position that stereotypes of women secluded in their houses has to be changed: women were not isolated, but they were nonetheless strictly socially controlled by men. After a short examination of "the other" women, where she points to differences between *hetairai* and *pornai*, Cantarella concludes her contribution with the analysis of Aristotle's biological theorizing on role of man and woman in creation of new life. She finds that his theory on woman passivity in biological reproduction was a final step of a long process of constructing Greek social gender stereotypes, reinforcing the discriminatory legal rules on position of women. On the other hand, she brightly avoids modern stereotypes and *topoi*, such as that women had in Greece legal status like slaves or children, pointing out to the fact that women had the status of citizen (although she was deprived of citizen's functions), that they were able to abandon conjugal connection through *apoleipsis*, etc. All together it resulted in a highly balanced, reliable and valuable micro gender study.

In an extraordinary successfully condensed study *"Family and Property Law"* (254-266) Alberto Maffi (Professor of Roman Law at Milano-Bicocca State University) succeeded to present in a single chapter the most relevant and precise information on marriage and children status, inheritance, guardianship, ownership and property in ancient Athens. The task to carry out an overview of so many topics and different legal branches was evidently factor that limited a more detailed undertaking. Nonetheless Maffi succeeded, due to his fascinating knowledge both of scholarly literature and of relevant sources, to revive legal norms regulating so vital and the most common everyday issues in the life of an Athenian. In the same time he vividly shows how legal practices were working, particularly in a few-pages outline of family and inheritance law, whose most important details and open issues were exposed with tremendous ease. In remarkably clear manner, in the last part of the paper, he revealed

controversial and complicated issues dealing with means and procedure of ownership protection both of real estate and of movables. He succeeded to elucidate thorny aspects of complex notions and legal institutions like *embateuin, agein,* open issues of *diadikasia* procedure, etc. In a fluent and simple way he listed numerous crucial questions (as more room was lacking for further elaboration), leaving some of them unsolved and open for further discussion. His contribution is enriched by a discrete, but very useful comparative glances, particularly those connected to Roman law, whose logic and systematics affected scholarship on property issues in Greek (Athenian) law to a great extent. One may only regret that ownership and property did not deserve a separate chapter in this book to be examined more thoroughly, particularly by a competent author like Maffi. More comprehensive contributions on character and implications of so fundamental institutions of substantial law, particularly if posted in the social, economic, political and cultural context, would have given to this edition more complete portrait of Greek and Athenian law as a whole.

Through a scrupulous analysis of "*Athenian Citizenship Law*" (267–289) Cynthia Patterson (Associate Professor of History at Emory University in Atlanta) persuasively demonstrated changes and transformations in the concept of citizenship among Athenians. Owing to a sort of evolutionary approach she lucidly confirmed that the Athenian citizenship law was product of the distinctive history of the Athenian polis and its democracy, influenced by changes in politics, family and society from the time of Solon up to Macedonian era. Due to her sensitivity for the time dimension and her subtle understanding of gradual development of both the idea of citizenship and of citizenship law, she pointed to a few phases in the Athenian citizenship perception. In the first one (Solon's time) no conditions or requirements were set forth for a citizen status. Active participation and "sharing in the polis" were basically the main criteria for citizens' treatment. Only through a long evolution and changes performed by Pisistratus, and in particularly by Cleisthenes and Pericles, Athenians came to the dual parentage criteria – for acquiring the citizenship both father and mother were supposed to be Athenians. Considering famous "Pericles' citizenship law" she also convincingly suggests that both male and female could enjoy Athenian citizenship, aligning herself in that way with Cantarella's position in this book. Finally, in the time of orators, Athenian citizenship became, as she has brightly formulated, "a status marked by active participation, according to age and gender, in activities and relations, and by enjoyment of goods, within the interconnected spheres of family, local deme, and larger polis community. Citizenship law, therefore, should be understood to include not just the rule on citizen parentage, but also the nexus of laws governing inheritance, marriage, religious participation – an of course judicial and political privilege." She provocatively claims that Athens had not one citizenship law – but an interconnected set of laws that set forth the privilege and responsibilities of those who "shared in the city".

An outstanding expert for ancient Greek commercial and maritime law Edward Cohen (Adjunct Professor of Ancient History at the University of Pennsylvania), in his contribution "*Commercial Law*" (290-302), made a very clear distinction between nonmaritime and maritime spheres of commercial life in ancient Greece and Athens. His distinction to "land and sea", although it may sound a bit romantic, appears to be actually very realistic in organization of trade and commerce. He perceives differentiation between landed and maritime commercial activities as a part of a wider characteristic of classical Greeks, namely a tendency to understand and organize phenomena through complementary antithesis and "binary contrasts" - like

the one of *phanera ousia* ("visible property") and *aphanēs ousia* ("invisible property") or of the *pornē* ("whore") and *hetaira* ("courtesan") distinction. In that context he convincingly paints differences between the sharply separated commercial activities in the city itself (*kapēlia*) as landed retail trade at *agora*, including usually smaller value transactions, and the maritime transactions and exchange by sea (*emporia*) in the port maritime commercial center (*emporion*), mostly on a wholesale basis, much more complex and economically more important. Differences in legal treatment of the two are extremely large: worth mentioning here are some points that E. Cohen stresses, like the fact that nonmaritime – *agora* transactions were often undocumented, unwitnessed, almost free of governmental intrusion, while the maritime ones were regularly more complex, on a wholesale basis, witnessed, written documented, with a high level of the city-state involvement in regulation, control and dispute resolution. The author has so convincingly developed a vivid picture of many other important differences as well, that a reader feels temptation to go a step further, and get an anticipating impression that commercial and maritime law were practically two distinct branches of law already in ancient Greece and Athens.

Then follows the fourth part, encompassing three contributions on "*Law outside Athens*". The first article is most reasonably dedicated to the oldest surviving European "codification" or just "collection of laws", as some authors like to say, avoiding quite convenient and colloquial term – Code of Gortyn. John Davies (Emeritus Professor of Ancient History and Classical Archeology) has rightly named his contribution *"The Gortyn Laws"* (305-327), as the legal epigraphic evidence from this classical Cretan *polis* does not include the so called Great Gortyn Code of twelve columns, but also the Little Code of eight columns and many other valuable written sources coming from different ages (end of the seventh up to the fourth century). He offered an excellent, very detailed and systematic overview of different legal institutions and norms in Gortyn, but in the same time he also presented accurately actual controversies, as well as the most important arguments and counterarguments in current scholarship on different issues. The story of Gortyn laws, written with a specific archeological bouquet, is very vivid and persuasive, in particularly due to many quotations of legal norms from the Code, where the author appropriately lets the source to speak instead of him. Along with a correct presentation of legal issues in most cases, Davies offers a few interesting and original formulations, such as that the land was seen "as the object of at least *de facto* private ownership". He also presents many reasoned observations, such as that though the many status-terms were used in the Code, much extant law is formulated irrespective of status. The contribution succeeded to handle an uneasy task: to be attractive and completely comprehensible to a layman reader, and to be sophisticated and innovative enough to an expert.

Hans-Albert Rupprecht (Professor of Papyrology on the Law Faculty at the University of Marburg) contributed to the volume with aspects of "*Greek Law in Foreign Surroundings: Continuity and Development"* (328-342). He extracted just a number of brief remarks on some legal institutions coming from the wide field of Hellenistic law. He enumerates Greek institutions that were not taken over in Hellenistic times (such as the concept of *oikos*, *epiklēros*, prohibitions against *epigamia*) or those that were replaced by similar once (the *proix* dowry with the *phernē*, the *kyreia* with the guardianship of the *kyrios*), and institutions that remained unaltered (such as cash sale, loan, *misthōsis*, *syngraphē*). Rupprecht also points to new institutions developed later on (sale by credit, sale on delivery, *antichrēsis*, *ōnē en pistei* – although it was basically also a kind of replacement of the *prasis epi lusei*, *hypallagma*, *cheirographon*, *agoranomoi* documents, *diagraphē*, *hypomnēma*,

synchorēsis). He resolutely takes position that there was no Greco-Egyptian law (or "Ptolemaic law", as some authors used to call it), and that no osmosis between the two legal systems took place, accepting that "only minor assimilations" and borrowings were occasional. Rupprecht is also explicit on a more general issue of the unity of Greek law declaring, contrary to Gagarin in the same volume, that a number of basic juridical conceptions entitles us to take an affirmative stance on the unity question. The author does not summarize and discuss the counterarguments on those two fundamental topics, but simply expresses his view, attested in his other works. In conclusion he asserts that Greek law (reaffirming the idea of unity) preserved its basic structure over the centuries into Roman times. "This continuity did not stand in opposition to further development in response to the demands of changing economic and social life; rather, the newly developed legal institutions and forms fit smoothly into previously founded legal system while the basic structure remained intact". He adds finally an important remark that this sort of development was not the work of jurists, but rather of those who drafted contracts.

One of the most popular and learned contemporary scholars in ancient Greek and in particularly Hellenistic law, Joseph Mélèze Modrzejewski (Professor Emeritus of Ancient History at the Sorbonne and Professor of Papyrology and Ancient Legal History at the École Pratique des Hautes Études) offered an informative and charming contribution *"Greek Law in the Hellenistic Period: Family and Marriage"* (343-354). In the first part of his paper he discusses and rejects old idea of Hellenistic tradition as the one of "mixed law" and "mixed civilization". Although he is explicit in stating that "Hellenistic law is nothing else but Greek law practiced by the Greek-speaking immigrants within the kingdoms stemming from Alexander's conquest", it seems that he is more balanced and not so strict as Rupprecht in evaluating the importance of mutual borrowings between Greek and local Egyptian legal traditions. In softening his quite resolute starting point, he changes terminology a bit by speaking about "coexistence and interaction" between the two legal systems, and about "mutual exchange and borrowing between the rules and practices", adding that "estimating their accurate extent is not easy". Through a brilliant analysis of marriage, family and succession he portrays a number of institutions reflecting not only that Greek tradition remained unchanged, but also a number of them for which he admits the Egyptian influence on Greek practice (such as the eldest son's privilege in succession or the institution of *parapherna*). Still, there are some important changes that remained without convincing answer as to the influence of the neighboring legal system, such as endogamic tendencies in Greek law and marriage between brother and sister with the same parents or the changes in the legal status of Greek woman. Despite Modrzejewski's observation that some similarities between institutions in *nomoi politikoi* ("civic law" of the Greeks or Greek "common law", as he puts it) and *nomoi tēs chōras* ("the law of land" or the local Egyptian law) may have appeared due to similar evolution, the impression remains that so many resemblances between the two coexisting and interacting legal systems can not have been caused only by "coincidental convergence". Therefore certain elements of the older scholarship idea may still have chances to survive and reappear in some form, at least as an element of a quite popular, modern academic stream that promotes idea of legal changes through legal transplants and existence of hybrid legal systems.

Finally, the fifth part *"Other approaches to Greek Law"* consists of four fruitful contributions. The first one is *"Law, Attic Comedy, and the Regulation of Comic Speech"* (357-373) by Robert W. Wallace (Professor of Classics at Northwestern University, Chicago). The author shows how important source the Attic

comedy is for ancient Athenian law. It is not only that many detailed information can be depicted out of the Old Comedy about certain legal institutions (such as the procedure of *phanein* or the role of sykophants). The Old comedy also represented a kind of "response to the administration of justice by mass lawcourts" and, with its critical and free attitude, contributed to the history of freedom and democracy in Athens. Through meticulous analysis of different plays Wallace shows how freely the Old comedy was attacking and mocking judges, generals and politicians, as well as some deviances in court organization and procedure. The institutions of the city or important political decisions were not exempted from ridicule (such as criticism of Athens' war against Sparta). Wallace points out that the Athenians legislated against free speech only occasionally (usually with the excuse that they "forbid lampooning") in cases of serious danger to the city or to protect prominent citizens. But in general "comic license was entirely consistent with democratic *parrhēsia* and *isēgoria*" and the freedom of speech of ordinary citizens, so that those few restrictions on comedy are also consistent with the limitations on speech in other contexts. "Robust criticism of the demos, the democracy, and its politicians was judged beneficial". On the contrary, the New Comedy changed the focus completely, directing the humor not against the public institutions and politicians, but against social types and human character, being "self-censored". The author finds out at least three historical factors that helped effect this transformation. Particularly important was development of the notion that laws were to make people morally better, so that the Athenians came to think it right that people's lives should be more carefully guided by legal regulation. "Laws no longer regulated comic speech; comic speech helped to regulate Athens".

The second chapter *"Greek Tragedy and Law"* (374-393) by Danielle Allen (Professor of Classics and Political Science at the University of Chicago) is about links between Athenian tragedy on the one hand, and legal and political thought on the other. In the first part of her study dedicated to methodological issues on how to treat Greek tragedy in the research of law, she takes the standing that connecting plays to specific events is not satisfactory. She rather pleads for discovering conceptual elaborations of and/or challenges to the key terms that guided Athenian legal thought. On that ground she made an interesting, although a bit extensive socio-psychological profile of Greek society and law by focusing how the Athenian tragedians dealt with anger and law. She claims that anger was a key term for Athenian legal reasoning, being not only the source and the reason of particular punishments but also at the root of law itself. In arguing that a central task of law was to manage anger, and that the Athenians desired legal procedures and institutions that would shift attention from the choices of the individual to the choices of the city, she discovers a sort of a road sign in the Sophocles' Ode to Man. In that specific case she finds an instance where the study of Athenian law enables in fact our understanding of Greek tragedy, and not merely the other way around.

Contributing to *"Law and Political Theory"* (394-411) Josiah Ober (Professor of Classics at Princeton University) examines generally very popular topic of relationship between law and political theory among ancient Greeks. Although one might have impression that the subject is nearly exhausted due to huge number of valuable contributions on that issue, Ober has found a very interesting angle and offered elements of a new prospective. His basic input rests in the fact that one can search for answers on relations between law and political theory (and philosophy) not only in early, archaic Greek literature and practice (such as in works of Hesiod or Solon's didactic poetry), nor in famous conceptions of the most notable philosophers

(like Plato and Aristotle), but also in preserved orations of the mid fourth century and sources like Demosthenes law-court speeches. He raises questions of justice and power in Greek political thought and claims that Greeks did not develop a strong conception of natural law or objective morality. Ober asserts that Greek theorists were in some sense nearer to legal positivism, so that they rather paid a considerable concern in obtaining institutional conditions for achieving both procedural and substantive justice, basically having been oriented to three primary topics: legislation and amendment, application and interpretation of law, and enforcement and penology. Through his analysis of "classical" sources, in researching the conceptual linkage between legislation, application, and enforcement, he draws attention to Hesiod's ethical quietism, Solon's political activism, and Thucidides' moderate realism in understanding interstate legal relationships. He also asserts that Plato's early dialogues ilustrate that Athenian "positivistic" legal practice allowed substantive injustice, while in his later works Plato attempted to show that superior alternatives to procedural justice were possible. Whereas Plato was focused to the ethical relationship between law and the individual, Aristotle dealt more with the relationship between law and regime, claiming that state's laws are a reflection of the values peculiar to a specific regime. However, the most important innovation of this chapter is discovering Demosthenes as a political thinker (who was, as Ober defines, in the same time a legislator, a "consumer" of law, and a "public political theorist of law"). His significant statement is also that "it was in classical Athens that the recursive relationship between self-conscious political theorizing and current legal practice was most fully realized".

The last study in this book *"Law and Nature in Greek Thought"* (412-430) comes from A. A. Long (Professor of Classics and Professor of Literature at the University of California, Berkeley). Like the previous one, it is again a chapter discussing a never-ending topic of debate – issues of *nomos* and *physis* or, in another words, relationship and content of the idea of "natural law" and of the idea of "laws of nature". While the previous contribution is a story about political philosophy, this one belongs to pure legal philosophy. It is a useful survey of terminology (meanings of *nomos* and *physis*), as well as of the development of two principal notions (natural law and law of nature). It starts from Hesiod, early Greek philosophy and "prehistory" of the issue in works of Heraclitus, includes a brief observation on the matter by Thucydides (part II), analyzes positions of Plato and Aristotle (part III), evaluates crucial contribution by Epicureans and Stoicism in the Hellenistic age, with particular attention paid to Zeno's promotion of natural law, as well as of the Stoic Cleanthes standing (part IV). The chapter is completed with aspects of contributions by Seneca and Lucretius in Roman times, as well as with understandable final stress on Cicero's classical statement that "there will not be a different law at Rome and at Athens, or a different law now and in the future, but one law, everlasting and immutable, will hold good for all peoples and all times" (part V). One of the basic questions that the author tries to answer all through his study is why the two ideas – natural law and laws of nature are scarcely worked out into theory in Greek thought. He finds principal reasons in the contested connotations of the terms *nomos* and *physis* and, second, in the pressure of civic custom and codified law on the term *nomos*. Therefore not until early Stoicism in Hellenistic times we observe the concept of natural law. And only when Greek philosophy infiltrated Rome "it encountered a tradition of law that was far more systematic and articulated than local Greek experience had at hand", so that Roman thinkers "untrammeled by the *nomos/physis* controversy, found it easier than their Greek forbears to construe nature in terms of law and quasi-legal regulation".

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In conclusion, the overall impression is that the reader is faced with an excellent selection both of topics and of authors. Many hot and controversial issues are raised by the most competent authors and the best available specialists in the field. This volume is therefore also a compendium of what might be deemed the current scholarly *opinio communis* on many issues. Particular value of the book is that it comprehends contributions of authors with more or less different approaches, so that the edition has not only an informative task, rather it is in a way a book about the methodology of the current scholarship in ancient Greek law. Notwithstanding so many contributors the book still seems to be very coherent and has many cross references, so that in some aspects it looks like a unique product coming from the same desk This is not an easy task to achieve in collective works, as they often suffer from an uneven quality of the contributions, and are different in form and length. In this case the editors performed such a hard mission superbly, particularly as the volume is much more than a simple outline of different basic issues in the field, but a thorough analysis of diverse specific topics and controversies, promoting a broad selection of new questions.

The most important objection is that procedural and rhetorical aspects of Greek and Athenian law are overemphasized at the expence of substantial law. There can be no doubt that procedural aspects of Greek law are fascinating, interesting, and of course very important, particularly as they have been quite neglected for a long time. But the content of the book may disappoint those who expect to see a systematic overview of the most important branches of Greek (Athenian) law, as the title basically indicates. Namely, there are some striking absences. Most surprising of all is the nonappearance of a specific chapter dedicated to the law of inheritance in Athens, even though it was the most frequent way of obtaining property in antiquity, and probably one of the most important segments of legal practice in Athens (and consequently of surviving court speeches). In ancient societies inheritance marked quite a majority of all private transactions, and therefore it is one of the most important elements for understandanding how the individual life, society and legal system were functioning. By the same token, the other two most important branches of substantial law in antiquity (family law and ownership) are presented in the same brief chapter jointly, although each of them deserve exceptional attention. Torts in ancient Athens are the topic worth a book-length study that is missing right now, but a chapter on those issues would also be most welcome. In short, my main objection is that the legal life was functioning out of the courts and judgments as well, and that intercourse among citizens was mostly resolved by rules of substantive law without formal legal conflicts, causing no need for dispute resolution. Only a small part of actual life relations appeared to be subjected to court procedure. Nonetheless, procedural setting is crucial for the understanding of any legal system and it by all means deserves an appropriate attention and consideration, what is the important value of the volume.

After this book it is clear that the rhetorical context for understanding Greek, and in particularly Athenian law, is absolutely unavoidable. But it also seems to be a bit overdosed at the expence of other substantial legal issues. Also, the danger is that a reader may get a general impression that a kind of persuasive justice was dominant in ancient Athenian law over legal aspects of the case. On the other hand, immense importance of this book is that it has opened many questions on relation between

rhetoric, law and justice, and that it has done it so sharply that it will surely provoke many further examinations.

Finally, an objection considering methodological issues. The book clearly reflects methodological differences that have appeared in ancient Greek scholarship during the last decades. D. Cohen puts it so clearly in his introductory notes by saying that "majority of continental European scholars, for the most part trained in law, focused largely on technical doctrinal questions", while Anglo-American school of thought, represented mostly by non-lawyers, tends to observe Greek law in a broader political and social framework. It is only partially true. I would not be so happy with that kind of methodological division to continental and common law scholars, as the choice of methods nevertheless depends on individual author. By the way, scholars that have experienced decades of imposed Marxist methodology are not so impressed with an approach that takes into account economic, social, political and other contexts in research of legal history, as it performed a kind of compulsory methodological demand in the socialist scholarship. And, to be sincere, some contributions that appeared out of it were quite valuable.[8] What they have been missing was more detailed and accurate analysis of sources and more sensitivity for normative and cultural aspects, rather than unconfined pretentious ideological explanations with flourishing and amazing mantra-like terminology.

Therefore, it seems that ancient Greek scholars should not be divided to those two distinct methodological categories (Anglo-Americans and continental Europeans). On the contrary, a kind of convergence is visible even in this book, so that both the former and the latter have started to use elements of and profits from "the other" methodology. The only way that will guarantee prosperity of the discipline is combining the two approaches and using advantages that each of them offers. This book is a significant contribution to that effect.

[8] The language barrier prevents many Western scholars to have a closer insight in studies published in the Soviet, now Russian periodical *Vestnik Drevnei Istorii*, where one can meet interesting ideas and conclusions (many of them could be very attractive to be discussed even today, of course after an ideological decontamination). I will just mention examples of old articles from the Marxist period on social relations, family law, inheritance and ownership in Crete and Gortyn by L. N. K a z a m a n o v a ("Nekotorie voprosi socialno-ekonomiceskogo stroja kritskih polisov", VDI 3/1957, "K voprosu o semje i nasledstvennom prave na Krite v VI-V vv. do n.e.", 4/1960), M. K o l o b o v a ("Vojkej na Krite", VDI 2/1957), or the more accessible book in English by P. O l i v a, Sparta and her Social Problems, Prague 1971.