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Edward M. Harris and Lene Rubinstein (edd.), *The Law and the Courts in Ancient Greece*. London: Duckworth, 2004. Pp. xi + 240. ISBN 0-7156-3117-9. UK£45.00.

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This book belongs to a growing and significant genre of Classics publications. Neither a selection of disparate conference papers nor a *Festschrift* composed of articles vaguely reminiscent of a retiring scholar's labours, nor even readings selected from previously published -- and probably obsolescent -- articles, it is rather the product of an invitation for directed scholarly contributions (p. xi). The advantages of the new genre, which might be called 'the invitation volume' or simply 'invitations', ought to be immediately apparent; the idea of requesting top scholars to write critical synopses has met with success recently.[[1]] Contributions still run the risk of being idiosyncratic in their approach, but in *The Law and the Courts in Ancient Greece*, the subject is sufficiently precise and rigorous as to make the invitations both commensurable and inviting. All nine articles commendably combine the use of both epigraphical and literary sources and, while some deal substantially with Athens or other specific areas, they include frequent attempts to link the local sources used with those provided by the rest of the Greek world.

The introduction by the editors (pp. 1-18) specifies the main issue -- 'the question of the connection between the law and the courts in Ancient Greece' (p. 1). Some scholars hold that legal decisions were influenced by the 'personalities and personal records of the opposing litigants', others that 'the application of the law was central to the legal process as a whole' (p. 2). The editors themselves provide a close study of the issue of the 'law and the courts' from a terminological standpoint. They define *nomoi* as texts which (1) were enforced by a political authority; (2) were intended to have a wide or universal application; (3) prescribed the conduct of individuals toward one another and toward the community as a whole and (4) contained a sanction (p. 3). The editors then proceed to analyse 'the sources of legitimacy that made a *nomos* truly a *nomos*' (p. 4). It may seem that they are straying into a *petitio principi*, for how can one speak of forms of 'legitimacy' when the starting definition of 'law' is that it was sanctioned and backed by a political authority? This methodological problem rears its ugly head in a few of the contributions, which explore the law and sources of legitimacy from different angles.

The first article, Harris' 'Antigone the Lawyer, or the Ambiguities of *Nomos*' (pp. 19-56), raises many questions about the applicability of legal arguments to the tragic stage. Harris studies 'the debate about the law in Sophocles' *Antigone* to show that Antigone is the one who has the stronger legal arguments', intending to conclude that '[c]ontrary to the opinion of many recent scholars, it is Creon who misunderstands the duties of a magistrate and breaks the law' (p. 21). That the Greeks considered all laws to be legitimated by three 'unwritten laws' is known from two sources, Xen. *Mem.* 4.4.19 and Aesch. *Suppl.* 698-709. These laws were: (1) honour the gods; (2) respect one's parents and (3) repay a favour/respect strangers (p. 29). Antigone's legal argument, if it can be so called, favours the second unwritten law over the *kerugma* issued by Creon. While Ismene tells her sister that it is a political *nomos* to obey magistrates in power, Harris argues that Antigone has a stronger case, because the duty to bury one's relatives was a 'unwritten' *nomos* (p. 37). He goes even further in suggesting that Antigone is allowed under an Athenian law -- the Ephebic Oath! -- to disobey an order that violates an unwritten law (p. 39).[[2]] Antigone's arguments are therefore 'in keeping with Athenian views about the role of law in democracy' (p. 40). Many assumptions in Harris' contribution seem unwarranted. That the democratic Athenians considered Creon a magistrate and, more importantly, that they viewed the tragic stage as locus for the resolution of a legal dispute, with one side clearly the winner, is far from certain. It seems equally uncertain that the Athenians would have viewed Antigone as abiding by laws which held a greater degree of legitimacy than Creon's. Far more probably, Sophocles was suggesting that conflict arising between legal and paralegal prescriptions, between written and unwritten laws, is dangerous and cannot be resolved in a simple way.

The problematic distinction between written and unwritten nomoi finds an echo in R. C. T. Parker's article 'What are sacred laws?' (pp. 57-70) which creates a typology of laws and other paralegal conventions dealing with religious matters. The category 'sacred laws', as Parker, points out, has been criticised, since the Greeks did not usually make a precise distinction between civic and sacred matters in their decrees or legislation (p. 57 with n. 6). Even in cases where no issuing authority for a law is identified 'no presumption should arise that it originated elsewhere than in the assembly' (p. 59). He goes on to find, however, many types of 'sacred laws' that do not

seem to contain official sanctions and that are not properly to be called 'laws'. Parker identifies seven types of documents previously classified as 'sacred laws': (1) laws protecting sanctuaries; (2) festival legislation; (3) laws defining priest's perquisites; (4) sales of priesthood; (5) funereal laws; (6) sacred conventions; (7) purity regulations. (This typology is by no means exhaustive as more types could be identified with some precision: for example, sacred calendars and private cult foundations). The last two types are, according to Parker, to be viewed as 'exegetical' or 'advisory' laws, which lacked procedures for enforcement. It is likely, however, that the hortatory function of these texts may not have been as primary as Parker thinks. All laws are to some extent advisory and exegetical, but that does not undermine their authority. Worshippers visiting a sanctuary will easily have assumed that sacred conventions, even where this was not explicitly stated, could be enforced by a local authority.[[3]] Parker's conclusion, that 'the sacred laws of our collection are not just heterogeneous one with another, but also not sharply delimited within a much larger body of material' (p. 67) cannot be maintained. Types of sacred laws, as he has admirably shown, are readily identifiable and the category as a whole, heterogeneous though it may be, deserves to remain a convenient way of referring to these types of civic decrees which regulate behaviour in sanctuaries.

F. S. Naiden's 'Supplication and the Law' (pp. 71-91) picks up the dichotomy between legal and paralegal conventions present in the two previous articles and usefully questions its validity in a discussion of supplication. Naiden argues that a clear-cut distinction between divine and man-made law with regard to supplication does not exist.[[4]] The sources reveal instead that a combination of the two categories was used in practice. This conclusion follows naturally from the fact that the final stage of supplication involved an act of judgement on the part of the *supplicandus*, who would not necessarily weigh the moral (divine) or political (man-made) implications of his act carefully, but could be swayed by other means. Naiden's definitional remarks are particularly excellent and illustrated with copious examples (pp. 72-80). His treatment of the theme of the 'removal of the suppliant' is groundbreaking (p. 77). Again, however, the argument may be stretched a little thin when it comes to test his observations with the case of Aeschylus' *Suppliants* and its inevitable 'abnormalities' (pp. 83-88).

J. Sickinger in 'The Laws of Athens: Publication, Preservation, Consultation' (pp. 93-109) challenges the received opinion that consultation of laws in Athens was difficult and limited with a careful and sound epigraphical study. He provides a splendid review of the habit of inscribing laws in Athens, starting in the mid-fifth century BCE. This enables him to observe that although inscriptions were set up throughout the city, 'the placement of stelae was not haphazard' since laws were regularly set up in contextually relevant places (p. 95) or new laws would make reference to previously existing legislation (p. 98). Access to needed texts might require some guidance, but would not be overly difficult (pp. 96f., well illustrated with fourth century examples). Sickinger also provides a survey of the distribution of laws in the fifth and fourth century inscriptions (pp. 98f.) and argues quite plausibly that two factors may currently hinder our knowledge about the display of legislation in ancient Athens: (1) that there may have been 'selectivity in publication' of laws (p. 99) and (2) that wood or bronze plaques, even inscriptions on plastered walls, may have served to temporarily display current legislation (pp. 100f.). Magistrates may also have kept copies of relevant laws and cases, and the Bouleuterion and the Metroon served as central archives (pp. 102-105).

'Offence and Procedure in Athenian Law' by C. Carey (pp. 111-36) criticises another received notion about the law in ancient Athens, that it had an 'open texture', 'a procedural flexibility which allows a number of different routes for the pursuit of a single delict, based on considerations of risk, prospects for success, and nature of punishment' (p. 112).[[5]] This model finds its main source in passage from Demosthenes (22.25-27). Carey shows (p. 113) that the Demosthenic argument 'has its origins in rhetorical need [against Androtion] rather than [in] a desire to inform' and demonstrates that other theories about procedure, equally rhetorical, were in circulation in Athens at the time.[[6]]] Carey surveys the different procedures available for a variety of offences (such as *lopodytein*, *hybris*, *moicheia*) to show that the Demosthenic model of procedural flexibility is oversimplified from actual Athenian practice, where 'the choice of procedure reflects not just the subjective calculations of prosecutor (though inevitably this is a factor in the choice) but also the circumstances of commission [. . .] detection or the chronological point of intervention' (p. 129).

P. J. Rhodes in 'Keeping to the Point' (pp. 137-58) confronts the evidence about the ancient practice of not straying *exo tou pragmatos* with the conclusion of modern scholarship, which claims that speakers did not keep to the point and were frequently irrelevant in court. He catalogues the allusions to the requirement for legal relevance in the Attic orators and also finds that in some cases, it was perfectly relevant and acceptable to

respond with a life-story, a defence 'outside the issue' or a character attack (p. 140). He concludes that 'Athenian litigants were much better than we have allowed at keeping to the point' (p. 156).

A. Lanni's 'Arguing from 'Precedent': Modern Perspectives on Athenian Practice' (pp. 159-71) views the rule of law in ancient Athens from different angles: the reference made by litigants to previous cases and the potential effect of the court's verdict on future judicial decisions. A fifth of extant speeches make use of precedent but not in a modern sense. The standard practice, he finds, was 'treating like cases alike' (p. 159) and use of precise legal precedents was rare (p. 164). The wider purpose of citing legal precedents was, it seems, 'to provide an aura of consistency to a system that was all too unpredictable' (p. 168). This may be felt to be a disappointing conclusion but it is well-evidenced and agrees with the lack of systematisation in the Athenian legal system found by both Carey and Rhodes.

M. Gargarin in 'The Rule of Law in Gortyn' (pp. 173-83) offers a comprehensive analysis of the importance of a lawcode outside the Athenian *polis*. He suggests three definitional aspects of the rule of law in ancient Greece: (1) the 'orderly and peaceful regulation of society according to a set of authoritative rules'; (2) the idea that 'no man is above the law'; and (3) the 'strict adherence to the law and the exclusion of extraneous, 'non-legal' considerations' (p. 173). Gargarin shows, with abundant examples, that 'public writing [. . .] functioned as authoritative standard to which a legislator or litigant could refer' in archaic and classical Greece (pp. 176f.). The monumental display of inscribed laws at Gortyn on Crete, he argues, must have impressed their authority upon citizens (p. 177) and the fact that some of the laws were displayed on sacred buildings 'would have added a further divine authority to the human authority of the polis' (pp. 177f.), a point which supports the arguments of both Harris and Parker.

A. Chaniotis' contribution, 'Justifying Territorial Claims in Classical and Hellenistic Greece: The Beginnings of International Law' (pp. 185-213) analyses modes of territorial acquisition in ancient Greece (namely inheritance, purchase, donation, and conquest) to show with concrete epigraphical evidence that the technical terms used for territorial claims in classical Greece form a consistent group, based on clearly conceived principles (such as differences between ownership and control, arguments of initial occupation). Chaniotis plausibly argues that '[t]hese principles can and should be regarded as 'international law' because of the remarkably high degree of consistency in their application and in the use of the relevant terminology -- a consistency that is even more remarkable considering the absence of a written body of rules' (p. 205).

On the whole, the compendium manages to effectively address its central issue. The relationship of the law and the courts was not characterised by a dichotomy between the records of the individual litigants and codified laws, but rather by a lack of systematisation which, in Athens, involved a broader conception of procedure (Carey), relevance (Rhodes) and precedent (Laani). A similar lack of systematisation also prevailed in the rest of Greece, where appeals to paralegal arguments (Harris, Chaniotis) and personal judgement (Naiden) could be made. As a general rule, however, laws were codified and sanctioned by a *polis* (Parker, Gargarin) and displayed so that they could be easily consulted (Sickinger, Gargarin). Further theoretical sophistication in defining 'law' would be needed to clarify the issue of what actually constituted 'legitimacy' in the ancient Greek world.

The editorial labours of Harris and Rubinstein render the articles a pleasure to read, which minor errata do not diminish.[[7]] Useful appendices are included: a collective bibliography for all of the articles (pp. 215-28) and an *index locorum* (pp. 229-40). The book will undoubtedly be of lasting value to students of ancient Greek law.

NOTES

[[1]] See most recently S. I. Johnston (ed.) *Religions of the Ancient World: A Guide* (Cambridge Mass. and London 2004).

[[2]] Harris (p. 39 n. 72) citing P. Siewert, 'The Ephebic Oath in Fifth-Century Athens', *JHS* 97 (1977) 102-11. But how the Ephebic Oath could be felt to apply to Antigone is anyone's guess.

[[3]] Parker refers to a similar criticism of his paper aired by L. Rubinstein: 'it is possible that the legislative body assumed that everybody would know how to deal with non-compliance under an already existing legal procedure' (p. 65 n. 30).

[[4]] A distinction between divine and man-made law had been argued for independently by L. Gernet

L'anthropologie de la Grèce ancienne (Paris 1968) pp. 175-260 and by M. Ostwald *Nomos and the Beginnings of Athenian Democracy* (Oxford 1969).

[[5]] For the 'open texture' theory see R. G. Osborne, 'Law in Action in Classical Athens', *JHS* 105 (1985) 40-58, followed by S. Todd, *The Shape of Athenian Law* (Oxford 1993) 122, 160-63.

[[6]] Carey cites Hyperides 3.4-6 as an example. That orator 'fits the prosecution to the crime' rather than 'to the situation of the prosecutor' (pp. 113f.).

[[7]] One citation error: the beginning of Parker (p. 66 n.51) should read '*OGIS* 331.3; 60; 332.61-62'; see Naiden's article (p. 88 n. 2) where these texts are correctly cited. Articles to be supplied: 'this made it impossible for [a/the] citizen who found texts of law' (p. 98); 'One possible sign of the ease with which litigants obtained texts of laws is [the] number of times individual statutes are read out . . . ' (p. 104). The following sentence on p. 186 is confused: 'the first, second and fourth [third] are undisputed traditional principles of private law; only the third [the fourth], the principle of conquest, was subject to controversy'. It may also be felt that the expression 'bronze stelae' (p. 100) is nonsensical; 'tablets' or 'plaques' would have been more appropriate.