

XIX Symposion of Greek and Hellenistic Law

This year the *XIX Symposion of Greek and Hellenistic Law*, organized by Adrian Lanni (Harvard) and Michael Gagarin (Austin), took place in the States, in the prestigious location of the Harvard Law School. Beginning on the morning of August 26th and lasting for four days, the conference was opened by a video message recorded by Joseph Méléze-Modrzejewski, who was unfortunately prevented from participating in person.

Martin Dreher (Magdeburg), *Die Rechte der Götter*, after a short introduction on the role of Greek gods as founders of law, concentrated on gods as legal subjects. Although obviously invisible, the gods were perceived by the Greeks as persons who had rights and would – in case that these rights were intruded upon by humans – react against them. Thus that gods had the right to possess property, both immobile and mobile, although the actual administration was carried out by humans. Dreher showed how gods and goddesses could acquire new possessions by accepting gifts and dedications, benefit from the existing possessions by collecting rent and lease payments and even alienating their property, by selling land or freeing slaves in sacred manumissions. With regard to real estate he clearly differentiated between sacred land on which sanctuaries, altars, statues or other symbols representing the deity were to be found, and land, which was used for economic reasons. The second part of Dreher's paper dealt with gods as protagonists in legal procedures, be they judges, witnesses, parties or patrons of their priests. The respondent was Philipp Scheibeleiter (Vienna).

Arguing against the idea that in Athens a voluntary abortion procured by a woman belonging to an *oikos* could be prosecuted either with a private specific action (*dike ambloseos*) or with a public action for *hybris*, Laura Pepe (Milan), *Abortion in Ancient Greece*, provided a new possible overall interpretation of the confused fragments of a lost Lysian speech concerning this topic. While supporting the traditional opinion that an abortion procured by a married woman without the consent of her husband was considered a private matter to be resolved exclusively inside the *oikos*, she pointed out some particular circumstances in which abortion could be relevant also in a public dimension, analyzing non-Athenian sources that might provide some possible parallel frameworks. The respondent was Bernard Legras (Paris).

Maria Youni (Komotini), *Councils of Elders and Aristocratic Government in the Cretan Poleis*, reviewed the scanty epigraphic evidence from various Cretan *poleis* in which the words *bolá* (= *boulé*), *preisageia* (= *gerousia*) or *preisistoi* occur, in order to draw some plausible conclusions about the composition, duties, and role of the Cretan Councils and their possible relation with the other organs of the *polis*' government (above all the *kosmoi*). Beyond the many differences in the institutions and in the political development of each *polis*, the available sources clearly prove the competence of the Coun-

cils in some relevant aspects of the administration of public finance, although they give no indication either of their involvement in judicial matters or of their probouleutic authority, which were two of the most important duties of Councils in many Greek cities. This, in Youni's opinion, might be due to the fact that, even though their role was not defined by law, the Cretan Elders, selected from the noblest and most powerful families, could exercise their influence through other magistrates who were members of their kin, or could use their authority inside their *phyla* or among their *hetairoi*. The respondent was Alberto Maffi (Milan).

Reexamining a well-known and much-debated question among Greek scholars, David Phillips (Los Angeles), *Hubris and the Unity of Greek Law*, indicated first the three criteria by which the idea of a meaningful unity has to manifest specifically in an actual substantive or procedural law: namely, a significant similarity in the laws of two or more independent *poleis*; the presence of a substantive or procedural phenomenon in a community composed of Greeks from different *poleis*; and a temporal continuity and persistence of a significant legal feature. Then, starting from the text of the law of *hubris* preserved at Dem. 21.47 and from the Aristotelian definition of the offence at *Rhet.* 1378b14ff. and elsewhere, he provided and discussed several literary and epigraphic sources about *hubris* from different times and places that satisfy all these criteria. In this way, he supported the idea that *hubris* can be accepted as a term and a concept of "Greek" law, that was vital not only in the legal systems of various *poleis* but also in the vocabulary of the fledgling Greek international law. The respondent was Adriaan Lanni (Harvard).

In his paper *Rhetoric as a Source of Law in Athens*, Michael Gagarin (Austin) illustrated through some eloquent examples (Lys. 1 and 10, Isae. 11, Dem. 18, Aesch. 3) that the interpretation of the meaning and the applicability of the law to the case at hand provided by the orators in their speeches was the main guide on which the jurors could rely to determine their verdict. Moreover, if a particular interpretation of a law given in a forensic speech was repeatedly successful, that interpretation could have become authoritative, since there was no law that might have decided what exactly was the meaning of the law itself. From this perspective, forensic speeches represented the most significant source of law, in the legal sense, after the laws themselves, according to which the jurors swore they would judge. The respondent was Stephen Todd (Manchester).

The purpose of the paper by Werner Riess (Hamburg), *The Athenian Legal System and Its Public Aspects*, was to demonstrate in depth the more significant implications of principle that the Athenian democracy's insisted on the public accessibility of legal proceedings. To this end, he analyzed some aspects of the Athenian legal system in order to demonstrate that openness and visibility were semantic markers that lay at the heart of the understanding of justice and democracy: for instance, the dichotomy between hidden and public violence, which implied that only the latter could be judged as legitimate in court;

the necessity of publicity to qualify an act as *hubris*; the relevance of public speaking, which explains the emergence of oratory; and the choice of a certain kind of procedure by a private citizen, which was intended as a form of symbolic communication and as a part of the 'social drama' typical of the Athenian democracy. The respondent was Victor Bers (Yale).

Lorenzo Gagliardi (Milan), *Consensual Defects in Contracts and the Athenian Law on 'Homologia Kyria'*, critically re-examined the issue of the existence in Greek law of a systematic treatment of consensual defects. First, he surveyed both the literary evidence concerning the relevance of the law on *homologia kyria* in the Athenian legal system and its varying modern interpretations; then, against Wolff's renowned *Zweckverfügung* theory, he formulated his thesis that the law on *homologia* recognized contracts based on the mere consent – i.e. simple agreement – of the parties and free from consensual defects (especially duress and fraud); even 'real' contracts required *homologia* as a necessary (although not sufficient) element for obligations to arise; any breach of this law allowed the wronged party to bring suit (generally a *dike blabes*). In support of his argument, he quoted and analyzed various sources, among which [Dem.] 48.54 and 56; [Dem.] 56.2; Hyper. 3.13-5; Plat. *Laws* 916c-d and 920d; and Plat. *Crit.* 52d-e. The respondent was Robert Wallace (Evanston).

After reviewing the different scholarly positions concerning the precise features and differences underlying the terms *hypothekē* (*hypotithenai*) and *praxis epi lysei*, Mark Sundahl (Cleveland), *Secured Credit in Athens: Reopening the Debate*, dedicated the first part of his paper to the theory developed by E. Harris in his 1988 article *When Is a Sale Not a Sale?* (CQ 38). In particular, he criticized with several arguments Harris' thesis that both terms, *hypothekē* and *praxis epi lysei*, were used interchangeably to refer to the same transaction (so that the choice of one instead of the other was merely rhetorical), and that the question of who owned the collateral was not relevant for the Athenians, and moreover could not be answered due to the primitive state of Athenian law regarding the transfer of ownership. Then, in the second section, Sundahl examined two Demosthenic speeches (*Against Lacritus* and *Against Pantaenetus*) that could provide an important contribution to our understanding of Athenian secured credit, with comparison to some modern models of transactions. The respondent was Gerhard Thür (Graz-Vienna).

Athina Dimopoulou (Athens), *Akyron esto: Legal Invalidity in Greek Inscriptions*, examined some epigraphic instances of the term *akyron* that, even in the lack of a systematic and uniform legal theory on the topic, can offer some indications on the concept of legal invalidity in Greek legal thought. Dimopoulou analyzed and discussed many occurrences of the *akyron* clause in Greek inscriptions of different places and times, classifying them in three categories. The first concerns invalidity in legal decisions, especially in international agreements; the second has to do with the *akyron* clause in legal statutes, in the form of international treaties, laws, decrees and decree propositions; the

third involves invalidity in private transactions and legal acts, such as testaments, manumissions, and contracts: in this last case, the invalidity clause in private agreements can shed some light against the idea that contractual liberty extended as far as to include even agreements forbidden by law. The respondent was Edward Cohen (Philadelphia).

Starting with a revised edition of a small, fragmented inscription from Philippi in Macedonia, Leopold Migeotte (Quebec), *L'aliénation de biens-fonds publics et sacrés dans les cités grecques aux périodes classique et hellénistique*, presented an analysis of the possibility to alienate public and sacred land. On the basis of numerous epigraphic and literary sources Migeotte showed the different categories of land and distinguished between the *domaine privé*, private property, of *poleis* and sanctuaries, and the *domaine public*, public property. Usually only private property was put up for sale, and this would regularly concern land and houses that had been confiscated and were thus used in order to secure the utmost revenue for the city or the temple. The same is true for loans the city or the sanctuary would obtain: only land that formed part of the *domaine privé* or revenues from the *domaine public* would be mortgaged. Thus he concluded that although public or sacred land was inalienable, there was always the possibility to dispose of those parts of the property that was not occupied by public buildings or sacred structures. The response was given by Michele Faraguna (Trieste).

Eva Jakab (Szeged), *Sale by Auction*, showed that individual proprietorship in Ptolemaic Egypt was set against public interests, such as the proper and regular cultivation of arable land. Land that was not used could be put to auction immediately, the necessary procedure could even be instigated by anybody interested in obtaining the lot and was handled swiftly. Thus the state could ensure that none of the precious fields would lie waste. Still newly acquired ownership came under two conditions: only if the full price agreed upon at the auction was paid, full ownership was transferred. On the other hand, the former owner had the possibility to reclaim his land within a given amount of time, thus restricting the rights of the new proprietor. As argued in several other papers at this conference, the flexible concepts of ownership and possession in Greek law still form one of the main points of interest in scholarly debate. Julie Vélissaropoulos-Karakostas (Athens) was the respondent.

Nadine Grotkamp (Frankfurt), *The Ptolemaic dikasterion*, concentrated on some procedural questions that had not been treated sufficiently up to now. Comparing the Ptolemaic *dikasterion* to different courts attested in epigraphic sources from throughout the Hellenistic world, she firstly stated a difference: the pretrial *anakrisis*, common to legal procedure in the Greek *polis*, was not part of the procedure in Egypt, in her eyes resulting from the absence of civic officials within the settlements in the countryside. She rejected the hypothesis that the *dikasterion* was formed on the model of the foreign judges attested in Hellenistic times and argued that this concept is rather to be seen in the another type of court – the *chrematistai*. Both systems, the foreign

judges and the *chrematistai*, increased in their importance at the same time as the (democratic) *dikasteria* underwent a decline. The response of Joseph Méléze-Modrzejewski was read by Julie Vélissaropoulos-Karakostas (Athens).

The paper by Adele Scafuro (Providence), *Decrees for Foreign Judges*, focused on foreign judges (*dikastai* or *diallaktai*) who, especially in times of crisis, warfare, and corruption, were asked to judge and/or to reconcile the inhabitants of a city according to the city's own laws. The decrees honoring them provide us with some important – even if sometimes messy – information about the procedure and the criteria they used: it is possible to assume, for example, that normally there was a procedural priority for reconciliation, even if sometimes there are indications that the judges were only instructed to judge, and even if, moreover, the priority for reconciliation should be more rhetorical than procedural. Particular attention was devoted by Scafuro to the analysis of the development and the alterations of the “emotive clauses” that often appear in the decrees, and in which the effort of the judges to bring the disputants into harmony, both by giving decisions and by reconciling, is stressed. Due to the absence of the respondent Eva Cantarella (Milan), the response was read out by Laura Pepe.

Bernhard Palme (Vienna), *Die Genese der bilinguen Prozeßprotokolle im byzantinischen Ägypten*, showed that the transition from minutes recording court-procedures in Roman Egypt, which were always documented in Greek, to the bilingual transcripts that are to be found from the last years of the third century AD on, is more than a mere change in the arrangement and presentation in the text. It reflects a change in the system of filing such documents, which had been in use in other parts of the Roman empire for several generations. The documentation is not recorded according to the chronologically arranged journals of the magistrates; after the reform – one of several enacted in Egypt under Diocletian in 298 – single files for every case were opened, in Latin and Greek. Moreover, Palme showed that this reform was only compulsory for Roman magistrates and their offices; at the lower administrative levels the traditional *hypomnematismoi* in Greek remained in use up to the middle of the fourth century AD. The respondent was Uri Yiftach-Firanko (Jerusalem).

In her paper *Rechtshistorische Überlegungen zu Dio Chrysostomus' Rede an die Rhodier* Kaja Harter-Uibopuu (Vienna) analyzed the sophists 31st oration *To the Rhodians* from a legal perspective and treated several arguments presented by him in order to show the inappropriateness of the Rhodian custom to rename old statues for new honorands. She compared three main arguments in the speech to the epigraphic evidence and could show that the reuse of honorific statues and the disregard of other honors was in fact qualified as *hierosylia* and *asebeia* and could be seen as a crime against the state, just as Dio argues. On the other hand his first main argument, namely that the reuse of statues was an interference with the private property of the honorands, has no parallels in any literary or documentary ancient source. At the end of her paper, Harter presented a law from Lindos (1st cent. AD)

that authorizes and regulates the renaming of statues in the sanctuary of Athena Lindia, by selling the right to have them inscribed to citizens and guests of the Rhodian town. The response was delivered by Delfim Leão (Coimbra).

At the end of the conference, Delfim Leão was designated as organizer of the next *Symposion* in Portugal.