JOURNAL OF THE AMERICAN ORIENTAL SOCIETY

The Journal of the American Oriental Society, ISSN 0003-0279, is published quarterly in March, June, September, and December by the American Oriental Society, 913 S. University Ave., Ann Arbor, MI 48109-1190. Periodicals postage paid at Ann Arbor and additional mailing offices, USPO ID 283620. Postmaster: send address changes to Journal of the American Oriental Society, Harlan Hatcher Graduate Library, 913 S. University Ave., University of Michigan, Ann Arbor, MI 48109-1190.

All information about the Society and the Journal, including membership dues and the Journal style sheet, can be found at www.americanorientalsociety.org. The Society and the Editors assume no responsibility for the views expressed by authors in the Society's publications.

COMPOSITION BY LOCKWOOD PRESS, P.O. BOX 133289, ATLANTA, GA 30333

PRINTED AT SHERIDAN PA, HANOVER, PA 17331

Reviews

Brief Reviews

Prozessrecht und Eid: Recht und Rechtsfindung in antiken Kulturen. Teil 1. Edited by HEINZ BARTA, MARTIN LANG, and ROBERT ROLLINGER. Philippika, vol. 86.1. Wiesbaden: HARRASSOWITZ VERLAG, 2015. Pp. xiii + 240. €56 (paper).

The book under review contains the contributions of twelve scholars to an interdisciplinary conference on procedural law (*Prozessrecht*) and oath, which took place in Innsbruck December 14–16, 2011. The volume is the fifth in a series of conference publications that emerged from the Innsbruck conference "Lebend(ig)e Rechtsgeschichte," each of which is devoted to a different legal-historical topic. A second part of the conference on the same topic took place in 2013, the results of which are still unpublished.

The book is divided into four sections, preceded by a foreword by Heinz Barta, greetings by the Dean of the Faculty of Law in Innsbruck, and the conference program. An index of place and personal names completes the volume.

The first section ("Einführung und Grundlagen") consists of a contribution by Heinz Barta ("Verfahrensrecht als frühes Zivilisierungsprojekt—Zur Teleologie rechtlicher Verfahren, pp. 1–18) and an essay by Kurt Kotrschal ("Biologie oder Moral," pp. 19–39).

Barta outlines the social significance of legal procedures and their central characteristics from a general legal-historical perspective. He emphasizes that legal proceedings are directly linked to state formation and, by suppressing self-help and self-empowerment, make it possible to guarantee legal protection by the state. In order to trace general developments in legal history and to compare the legal procedures of different societies, he names various criteria such as: Who is regarded as the creator and guarantor of law and justice? What is the relationship between legislation and law enforcement? What normative significance do legal procedures have in the respective society? How are the legal procedures organized, who conducts them? Do legal professions exist? In which way are divine instances involved?

Kotrschal's essay traces the evolutionary foundations of moral behavior. The author points out that fundamental morality is rooted in human biology and owed to the necessity of a complex social life based on the division of labor. However, since the brain areas responsible for this can be disturbed by suboptimal social conditions in childhood and vary greatly from one individual to another, each society needs extrinsic control and standardization through norms and regulations for its functioning.

The second section contains the talks by Susanne Paulus and Jan Dietrich, winners of the Antike Rechtsgeschichte award of the University Innsbruck. Susanne Paulus summarizes the results of her PhD thesis on the Babylonian Kudurru inscriptions from the Kassite to the early Neo-Babylonian period (*Die babylonischen* Kudurru-*Inschriften von der kassitischen bis zur frühneubabylonischen Zeit* [Münster: Ugarit-Verlag, 2014]). She points out that the land bestowed by the king was not collective, but private property. The king granted the beneficiaries the right to collect the taxes earned from the land. As the beneficiaries were supplied directly from their estates, the royal household was released. At the same time, the provinces were weakened. Concerning the function of the Kudurrus, Paulus argues against the hypothesis that the erection of the Kudurrus was meant as an act of legal notice (*Publikationsakt*). Neither did they serve as a means of proof. Instead they had a protective function in that they were supposed to prevent violations of property by the king and officials of the provincial administration.

Jan Dietrich gives an insight into his PhD thesis on the topic of collective guilt and liability in the Old Testament and the ancient Near East. The focus is on the rite described in Deut. 21:1–9 which, according to Dietrich, is an atonement rite that attempts to avert the threat to the community caused by bloodshed committed by an unknown person. Through the ritual killing of the cow, the community condemns the crime and dissociates itself from it.

The third section contains five contributions that examine the role of oath and procedural law in various cultures of the first millennium. Betina Faist provides an overview of the oath in the Neo-Assyrian trial, attested by numerous court records from the eighth and seventh centuries BCE. Besides the occasions, the actors, and the function of the oaths, she discusses the place and the procedure of the ceremony. She argues that the oath probably took place in the temple before the symbols of the gods, and that the oath ritual apparently included cleansing rites in a water installation that could be entered (Akkadian: *natbaktu*).

Eckart Otto offers a typological comparison of procedural law and the asseveratory oath (*Beweis-eid*) in Cuneiform and Biblical Law. He emphasizes the special significance of law in ancient Israel for the history of ancient Near Eastern law, which, unlike the law of its neighboring states, has preserved traits of gentile law up to the Hellenistic period. As for the development of ancient Near Eastern law, Otto rejects the idea according to which self-help is first replaced by arbitration and then by state adjudication (*staatliche Gerichtsbarkeit*) carried out by judges. He emphasizes that arbitration in the ancient Near East is only attested in the Neo-Assyrian period, with the judges acting as mediators. Reasons for this were the repression of the declaratory oath (*assertorischer Eid*) and a secularization of the evidence procedure.

Simone Paganini deals with the organization of courts and the judicial process in ancient Israel and examines the role of the central court and the law of judges and witnesses in Deuteronomy.

Kristin Kleber discusses the declaratory oath in the judicial process of the Neo-Babylonian period. By an analysis of the sources, she rejects the hypothesis that, in addition to the solemn oath that was decisive for the trial (*prozessentscheidender Eid/Beweiseid*), there was also a less solemn oath, which was intended to lend more credibility to the statement.

Gerhard Thür examines the procedural oaths in Drakon's law and their afterlife in classical Athens. He points out that in Drakon's law for the first time in Greek Law the declaratory oath that was decisive for the trial (*prozessentscheidender Eid/Beweiseid*), taken by only one party, was replaced by an oath taken by both parties. The case was decided by an arbitral tribunal that decided on the arguments of both parties by a majority vote.

The fourth section contains four contributions devoted to oath and procedural law in cultures of the second millennium.

Walther Sallaberger examines Sumerian and Old Babylonian oath formulae from a lexical and cultural-historical perspective. In particular, he discusses the question of whether the oaths sworn by deities are due to a different perception of the world than those sworn, e.g., by the king. Sallaberger emphasizes that in all oaths not the religious element, but the affirmation of the statement is at the center. Developments from the religious to the secular can therefore not be deduced directly from the formula types.

Guido Pfeifer deals with clauses to forswear litigation (*Klageverzichtsklauseln*) in Old Babylonian treaties and court records. He points out that the function of the clauses can be only partially understood. As various sources show, the formulas did not automatically lead to a final settlement. Rather, a trial could be resumed despite such a clause. However, since the plaintiff in this case was subject to a penalty, the clauses did have a general preventive function.

Susanne Paulus explores in her second contribution the reasons for the decline of oaths in court trials in favor of ordeals in the Middle Babylonian period. She argues that in contrast to the declaratory oath, the ordeal was always bilateral and thus fairer. While in the case of the oath the judge made a preliminary decision by determining who had to perform it, this was not the case with the ordeal. Through this procedure not only the innocence of the accused but also the guilt of the prosecutor could be established. The elaborate ordeal procedure also had a deterrent effect and led to an increase in extrajudicial settlements.

Elena Devecchi traces the role of the oath in Hittite procedural law. She states that in Hittite court trials both the parties and witnesses could be obliged to swear an oath. However, due to the sketchy situation of the sources, it is not possible to say exactly when the oath was taken during the trial or what consequences it had for its outcome.

Overall, the contributions offer a good overview of the role of the oath and procedural law in the respective cultures and periods. Some articles also present new sources and findings. Particularly notable are the contributions by Kleber and Paulus, which contain editions of previously unpublished texts.

All articles are written by experts in the respective cultures and their legal traditions.

They are distinguished by high academic quality, clear structure, and readability. The combination of general information and new research results allows both specialists and non-specialists to benefit from the volume.

Many non-native speakers may find it a disadvantage that the contributions are written exclusively in German. Summaries in English would certainly have facilitated access and opened up the volume to a broader public. Furthermore, a résumé at the end of the volume, reviewing the major results achieved in the contributions from the perspective of the key questions raised by Heinz Barta in his introductory article would have enriched the volume. Nevertheless, it is a very informative book, for the publication of which the editors are to be thanked.

Birgit Christiansen
LMU München