BOOK REVIEW

Nova Ratione: *Change of Paradigm in Roman Law*. Edited by BOUDEWIJN SIRKS. Philippika: Altertumswissenschaftliche Abhandlungen 72. Harassowitz Verlag, 2014. Pp.vii + 179. Paperback, €48. ISBN 978-3-447-10219-3.

This volume collects seven contributions dealing with "paradigm shifts" in Roman law. Paradigms, as philosopher of science Thomas Kuhn famously argued in *The Structure of Scientific Revolutions* (1962), are the grounding sets of assumptions—the basic frameworks—that make disciplinary knowledge possible. Kuhn developed his model to explain periods of stability and variation in the natural sciences: paradigms permit "normal science," but eventually shift when the old paradigms can no longer explain the accumulation of new or anomalous data. Is it possible, then, to extend Kuhnian modes of explanation to the "science" of Roman jurisprudence? This is a question with significant stakes: were changes in Roman law the product of autonomous development, or were they caused by external factors? Which factors? Under what circumstances? The contributors, all jurists, propose few global answers, but much food for thought. Their contributions are relatively technical, and their engagement with the stated purpose of the volume varies considerably.

Ulrike Babusiaux deals with a reform introduced into the praetorian edict by Julian, the *nova clausula Iuliani*. This *clausula* attempted to deal with a problem in the law of inheritance, namely, what was to be done in the case of an emancipated son whose biological children were still in the *potestas* of their grandfather (and hence civil law heirs). Julian's solution jettisoned an earlier tradition, which kept separate the position of praetorian and civil law heirs. Julian, for reasons of equity, treated them as identical. This need to change inheritance law was provoked by new understandings of family, which could no longer be reduced to *potestas*, but instead accommodated more complex, overlapping ties. This seems less of a paradigm shift in the Kuhnian sense, than an attempt to *prevent* a paradigm shift by resuscitating or re-adpating pre-existing categories.

Roberto Fiori takes on the long history of specific contracts in Roman law. At stake is the relationship between the development of specific doctrines of contract and the world of economic transactions. Fiori argues that the class of "innominate contracts" emerged only relatively late, in the second century AD, and even then

had a short life, since as a doctrinal solution it was out of synch with the reality of complex commercial transactions. Again, as in Babusiaux's essay, this external world is conjured and assumed to assert causal force, but the details are never explained (a recurrent theme in most of the essays, in fact). How these doctrinal developments link back to the broad concept of "paradigm shifts" is similarly not made explicit.

Johannes Platschek points to a tension in developed Roman law between *patria potestas* (understood as a foundational element of the Roman legal and political order) and its abuse, namely, in the case of a conflict between a father and his children. To elucidate the tension he returns to the Petition of Dionysia (*P.Oxy.* II 237). Reviewing the arguments of Dionysia and her father Chairemon, and the solutions of various Roman officials, he concludes that "[n]either the old Roman family nor the patriarchal structures in the province of Egypt can remain untouched by the authority the imperial state is claiming" (61). This is presumably so, but whether this "gradual and cautious, but nonetheless fundamental change" is to be understood as a paradigm shift in the Kuhnian sense remains an open question.

Ingo Reichard's contribution on the Stipulatio Aquiliana will likely appeal exclusively to specialists in Roman legal doctrine. His topic is the extinction of obligations, and the essay winds though the complexities of novation and the assignment of obligations. The question he poses in the title— of whether the *stipulatio aquiliana* constitutes a change is paradigm—is left, at the end, "for the reader to decide".

Gianni Santucci deals with the development of rules concerning the relative contributions of partners to a partnership. Over time, Roman jurists, beginning with Servius, adapted increasingly flexible understandings of the relative contributions of partners, coming to take account not only of capital, but also of contributions of skill (*ars, peritia*), connections (*gratia*), and diligence or persistence (*industria*). This brought increasing refinement to the ways that jurists imagined the standards to which a deficient partner should be held. This shift can be traced back to the great debate between Sabinus and Mucius.

Philosophy looms large as an explanation for shifts in legal doctrine in Martin Schermaier's contribution. After an introduction laying out contemporary debates in the study of Roman law in Europe, Schermaier takes on the problem of the rise of theories of *consensus*. *Consensus* becomes a dominant theme not only in the law of contract, but in a wide variety of transactions starting relatively late in Roman

jurisprudence—primarily with Ulpian. This was due to the development of Stoic theories of the will that were typical of the second and early third centuries (the precise mechanics of causation are never demonstrated, nor is there an accompanying sociology of knowledge that explains why these ideas would appeal to jurists). Yet Ulpian's emphasis on *consensus* may actually qualify as a paradigm shift, one important for structuring theories of contract for many years.

The book concludes with Boudewijn Sirks's paper on the nature of *contractus*. Sirks suggests that the "bilateral" nature of contract is overstated, and that the essence of the term is in fact unilateral and subjective, a case he makes on linguistic grounds. Stoic accounts of causation, however, caused it to merge with concepts of *conventio*. This chapter will likely be accessible only to specialists, and could have been afforded closer editing.

Whether Kuhn's framework is viable for the study of law remains an open question. One would have welcomed specific engagement with it. Perhaps the tension between the conservatism necessary to preserve legal authority and the fact that legal regimes change constantly cannot be resolved by models generated by the natural sciences. If so, we are left with a series of papers on Roman law that will be most interesting to specialists, despite the promises made in the volume's title.

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