

BOOKREVIEW

Ancient Law, Ancient Society. By DENNIS P. KEHOE & THOMAS J. MCGINN, eds. Ann Arbor: University of Michigan Press, 2017. Pp. 216. Hardcover, \$75.00. ISBN 978-0-47213-043-6.

he connection between law and society in the ancient world can appear tenuous.

Law, if it serves anyone, appears closely enmeshed with the sensibilities of the ruling class. The Roman jurists of the late Republic and early Empire created law, but did so in remove from the wider concerns of society. Their process focused on discovering the principles that guided law, and in creating the new, they mined and studied the old. This was an academic exercise, inventing hypothetical situations and presenting learned, if prosaic, interpretations.

It is worth recognizing that these jurists typically belonged to the aristocratic elite of the Roman world, and their thoughts do not always betray much interest in the wider political spectrum. Where they do engage with wider social concerns, their comments can be insightful, in particular in recognizing important social values guiding (and justifying) legal decisions, but again this exists in an academic remove from the reality of wider society. In Athens the role of the people, whether in the *ekklesia* or as *nomothetai*, can appear very strong, and the function of their law is a crucial part of their democratic identity. That does not, however, mean that their legal system served all, or was not open to abuse from talented speakers and wealthy figures. It is still difficult to gauge the social implications of Athenian law. There are then valid questions concerning what ancient law can tell us of society, both in regards the immediate social environment, and in a much wider sense, the political and economic realities of the contemporary world.

This collection of essays, honouring Bruce Frier, explores the connection between law and society, and poses a number of important questions. Three chapters focus on Greece, and five look to Rome. A wide variety of topics is discussed, from collective sanctions, marriage, risk and concerns over rivers, to justice, agency and the true beneficiaries of private law. The result is an impressive collection of ideas and thoughts. In their introduction, Kehoe and McGinn paint a vivid image of law, and its importance in the study of the ancient world. They argue that a much deeper level of understanding can be achieved by drawing upon new methodologies, coming from the social sciences and the new institutional economics, and

thus asking different questions of the sources available (1–2). This view is an attractive one, placing law at the heart of historical inquiry, and offering new readings on familiar topics. However, the introduction does not deal well enough with the fundamental aspects of this argument, and attractive as it is, there are important concerns over the application of these methodologies and approaches.

The essays by and large do demonstrate that new questions and methods can be usefully applied to the Greek and Roman worlds; but not each is successful in drawing forth convincing conclusions. Indeed, partly because they draw upon new methodologies, a number of chapters lose the robust evidence focussed discussion needed to engage closely with issues of ancient law. Two of the more successful chapters look to Greece. Lanni's discussion of collective sanctions in Athens (9–31) is excellent. Here the modern interpretations are presented with care, and provide a useful framework against which to view the Athenian realities (10–13). The thoughts on *atimia* are compelling, and the conclusion reached; “[t]he Athenians did occasionally punish the innocent for the crimes of the guilty [...] [b]ut there was nothing primitive or irrational about Athenian collective sanctions” is persuasive (20).

So too is the argument put forward by Phillips (“Assumption of Risk in Athenian Law,” 46–65), where he draws upon the modern law of tort when considering risk (*volenti non fit injuria*), and couples this imaginative approach with a thorough re-examination of the contemporary evidence. There is an awareness of the difficulties posed by drawing upon modern approaches, but the argument presented is fluent and credible. From the Roman chapters, Kehoe's essay “Agency, Roman Law, and Roman Social Values” (105–132) stands out. It demonstrates very well the historical value of incorporating economic ideas and applying them to the Roman material. A focus on *mandatum* and agency allows Kehoe to present an important re-evaluation of the sources. Each of these chapters is successful because these new ideas, and borrowings from other disciplines, are used alongside close source analysis. There is also an awareness of the inherent limitations in applying these ideas away from their core discipline and period.

Not all the essays in this volume are as successful in marrying new methodologies with historical analysis. In depicting only the economic aspect of marriage in Athens, Leese paints a somewhat myopic portrait (32–45). Bannon's discussion of waterways is useful in shining a light on a crucial area of discord (66–83), and the essay presents a compelling narrative that views the rescripts as a communicative force “between centre and periphery: (citation at 79). However, the argument for the law's role in cultural transformation and the spread of Roman ideas is not

entirely convincing. Caldwell's discussion of Aelian's *Miscellaneous History* appears somewhat out of place (84-104). It allows for an interesting discussion of justice, but in reality does not fit alongside the other essays.

Both McGinn (133-166) and Pazdernick (167-182) provide some excellent moments of analysis and discussion. McGinn's essay tests important theses (e.g. Kehoe & Bannon; Volterra) concerning Roman Private Law, and Pazdernick presents a number of useful readings of Justinian's legislative efforts regarding mixed marriages, importantly exposing the important issues therein. However, in both, rather more needed to be made of the contemporary evidence, and to place it rather more firmly in its immediate setting.

To conclude, this is a work that does demonstrate that new methods and questions can allow for deeper level of understanding when looking at law, economics, and society in the ancient world. However, it also reveals that this can only be achieved through careful, consistent, and close analysis of the contemporary writings. The chapters are strongest when they take new ideas and approaches, and closely examine the Greek and Roman writings. They are weakest when too much is devoted to the newness of their approach, rather than being led by what the sources really can tell us.

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