DIKE

RIVISTA DI STORIA DEL DIRITTO GRECO ED ELLENISTICO

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XX Symposion of Greek and Hellenistic Law

Organized by Delfim Leão, the *XX Symposion of Greek and Hellenistic Law* took place in the beautiful frame of the University of Coimbra, Portugal. The meeting began on the morning of September 1st 2015 with the opening session by Joseph Mélèze-Mozdrejewzski, and lasted for four days.

The first paper, *Equality and the law in archaic Greece*, was delivered by Robert W. Wallace (Evanston), who challenged the theory that the concept of democracy and the notion of equality as a social idea emerged quite late in the constitutional order of the *poleis*, arising out of the fight of the *demos* against the leading aristocracy. Developing some recent theories, Wallace showed through literary and archaeological evidence that not even in archaic Greek history is there any undisputed proof of a political power held exclusively by the aristocrats. For example: in Homer, as well as in Hesiod, there are no class words but only value words (*e.g. kakos*, *esthlos*) to define the leaders, *basileis*, who moreover have no political or juridical power over the people: they are chosen *ad hoc* just because of their strength and/or a specific ability that fits particular circumstances. Hence, the Homeric society is a society of equals. Again, equality – and particularly equal distribution of land – was an important topic in archaic times in Athens, in Sparta, and in foreign settlements. Furthermore, as far as oligarchies are concerned, there is no hint in ancient sources that they were governed by aristocratic councils: in every polity it is the assembly who decides. The respondents were Laura Pepe (Milan) and Martin Dreher (Magdeburg).

The second lecturer was Carlo Pelloso (Padova), who presented a paper titled *L'ephesis eis ton dikasterion: contenuti e limiti della riforma processuale solonica*. After illustrating the three main theories about the legal nature of the Solonian *ephesis* – described by most scholars as an appeal, by others either as a mandatory referral from a magistrate to a popular jury or as a procedure that paralyzes the effects of the decision of a magistrate – Pelloso re-examined the two main sources on the topic (*AP* 9.1 and Plut. *Sol*. 18.2), then comparing the data that emerge from them with the traits that characterize some more recent

applications of the institute. The analysis led him to conclude that the Solonian *ephesis*, as an act taken by a citizen dissatisfied with the authoritative decision of a magistrate and preventing its enforceability, brought about before the popular court a new legal procedure among the same parties and about the same matter. Hence, the popular verdict cannot be considered as an amendment or as a confirmation of the magistrate decision, but as a final judgment given for the first time. The respondent was Martin Dreher (Magdeburg).

In her paper *'Gerotrophia': a controversial law*, Eva Cantarella (Milan) examined the content and the scope of the Solonian law that imposed on the Athenians the duty to maintain (*trephein*) their parents. While agreeing with the idea that originally, when it was enacted, the law fulfilled both an ideological and a socio-economical function – the importance for children to reciprocate the *paidotrophia* and for parents to teach their children a *techne* (cf. Plut. *Sol*. 22.1) – Cantarella focused on the different purpose the *gerotrophia* had in later times, and particularly towards the end of the fifth century, when the new *paideia* introduced and supported by the sophists increased the conflict between fathers and sons. The advantages and facilitations granted by the *graphe goneon kakoseos*, a public lawsuit that could be initiated by *ho boulomenos* against the sons who did not fulfill their duty of *gerotrophia*, together with the possible penalty of *atimia* imposed on the convicted defendant, were meant to be useful instruments to control that conflict. The response was given by Delfim Leão (Coimbra).

Julie Velissaropoulos-Karakostas (Athens), *Encore une fois sur les 'phialai exeleutherikai'*, after revising the main theories concerning the function of the *phialai* offered in the Athenian temple of Athena between 330 and 317/6 B.C., proposed a new hypothesis on the topic. Although, according to the common view, in Athens no formality was needed when a slave was manumitted, there is some scanty literary evidence that, at least in the second half of the fourth century, the manumission had to be performed publicly and approved by a decree of the assembly of the Athenian people (cf. esp. Aesch. 3.44); this was in fact the only means that could protect a freedman against the risk of being prosecuted with an *aphairesis eis douleian*. The chronological proximity between the literary evidence and the *phialai*, whose offer, according to the inscriptions on them, generally followed a judicial verdict, suggests that the trial was a means to legitimate manumissions that lacked the *imprimatur* of the Athenian people. The response was delivered by Adele Scafuro (Providence).

The last paper of the first day, *The legal and social situation of extramarital children in Roman Egypt before Constantine*, was delivered by Maria Nowak (Warsaw). Working on the papyrological evidence from the first three centuries AD, Nowak drew the conclusion that the status of a "fatherless child" was judged by the mere fact whether or not a child was raised by a father or a stepfather. This shows that illegitimacy was not a social but mainly a legal problem. On the other hand, the sources create the impression that the case of illegiti-

mate children must have been a common phenomenon in Roman Egypt, and at least from a social point of view it did not cause that many disadvantages for the children one would expect. So Nowak showed that, according to the documents, also these children were treated as members of households or families. The respondent was Uri Yiftach-Firanko (Tel Aviv).

The morning session of the second day of the meeting was started by José Luis Alonso (San Sebastian), *Real securities in the papyri: Ὠνὴ ἐν πίστει: was there a Greek tradition of Sicherungsübereignung?* The speaker referred to the astonishing observation he had made during the preparation of the paper, arguing that the institute of *one en pistei*, which in literature is very often understood as a "typical Greek instrument", did not exist in the law of the papyri. Therefore Alonso examined prominent sources like – for example – the group of the '*menein*'-contracts, i.e. documents containing the clause that an object given as security to a creditor should remain with him in case of default. This clause is traditionally understood as a proof for the concept of "Sicherungsübereignung" in Greek law: the verb *menein* ("to remain with") assumes a reference to a state that was created earlier. So it is common opinion that property was transferred from the debtor to the creditor to secure an obligation, and that, in case of the debtor's default, this property should remain with the creditor. Alonso contradicted this interpretation with arguments based on some other texts showing a different concept concerning the law of execution. Finally Alonso proposed a new interpretation of the text from M.Chr. 233 (111 BC), the only document that contained the phrase *one en pistei*. The respondent was Gerhard Thür (Wien).

In his paper *Riflessioni su 'dikai emporikai' e prestito marittimo*, Alberto Maffi (Milan) focused on some still unanswered questions about commercial cases: what criteria justified their institution, and what was their relationship with the *dikai apo symbolon*? What were their main features? Is it true that, also thanks to their inclusion in the "monthly cases", *dikai emmenoi*, what characterized them most was the speed of their judicial procedure (Maffi pointed out that this seems unlikely, since responsible of the cases were the *thesmothetai*, who had to take care of a variety of other cases too, and the procedure was the ordinary one in front of the popular court)? What were the political reasons why the Athenian lawmaker allowed the defendant in a *dike emporike* to recur in some specific circumstances (lack of a written contract, destination of the commercial trip or of the imported grain different from Athens) to a *paragraphe*? Maffi's conclusion is that the main goal of the *dikai emporikai* might have been to increase the flow of grain on the Athenian market by attracting in Athens traders, shipmasters and lenders, and at the same time to put the grain trade under the direct control of the popular court. The respondent was Mark Sundahl (Cleveland).

Patrick Sänger (Wien), *Die Jurisdiktion der jüdischen Gemeinde von Herakleopolis: Normal- oder Sonderfall im hellenistischen Ägypten?*, focused on questions of procedural law treated in the corpus of 20 Ptolemaic papyri from

Herakleopolis, known as the *politeuma* of the Jews (P.Polit.Iud.). Sänger pointed out that the *politeuma* of Herakleopolis was not a unique case in Ptolemaic Egypt, but is the best documented one. On the basis of these sources Sänger doubted if the terminus "Sondergerichtsbarkeit", which had been chosen by James M.S. Cowey and Klaus Maresch, the editors of the *politeuma*, in 2001, was the correct denomination; comparing the documents with the archive of the *phrourachos Dioskurides* (P.Phrur.Diosk.) from the second Century BC Sänger pleaded for a different interpretation of the *politeuma*'s jurisdiction, suggesting that it could better be explained with the concept of "Beamtenjustiz", a legal term that had already been used by Hans Julius Wolff in a similar context. Sänger went a step further reconsidering other questions, like the competence of jurisdiction in the *politeuma*. The respondent was Joseph Mélèze-Mozdrejewzski (Paris).

In her paper *Keine Konkurrenz und dennoch Recht: Zum Umgang Roms mit lokalen Behörden*, Andrea Jördens (Heidelberg) discussed the Roman influence on local Egyptian law and *vice versa*. Therefore she referred to the so called *ton Aigyption nomoi*: several documents confirm that a court decision was in accordance with this "Egyptian law(s)". Although the debate on the legal nature of these rules – be it law, be it custom – and its tradition – either orally or in a kind of a law code – is still going on, Jördens concentrated on the Romans' attitude to local Egyptian law. Therefore she took a closer look on cases that had been brought to the *praefectus Aegypti*, like P.Oxy 4,706 = M.Chr. 81 (73/113-117 AD) or P.Oxy 42,3015 (undated). Jördens drew the conclusion that the Roman magistrates without doubt were willing to refer to local law and therefore consulted experts on Egyptian law, especially when a matter of fact concerned family law or the law of succession. The respondent was Èva Jakab (Szeged).

The last paper of the day also concerned the debate "Reichsrecht vs. Volksrecht". Speaking about *Greek laws after the Constitutio Antoniniana. Ideology, rhetoric and procedure between Imperial and Late Antiquity*, Dimitris Karambelas (Athens) used the famous theory of Ludwig Mitteis as a frame to discuss an episode from the *Vita* of the sophist Julian by Eunapios from Sardes. Karambelas first presented some general ideas about the relationship of local (Greek) and Roman law after 212 AD. Therefore he quoted some famous passages from Gregorios Thaumatourgos, *In Origenem* (*Prosphonetikos*) 7 (1,43) and Menandros from Laodikeia, *Diairesis* 363-364 (Spengel). In these two texts, from a Greek perspective, allusions are made to the dichotomy *ethos* (Greek custom) and *nomos* (Roman laws). Based on these observations Karambelas presented the procedure against the pupils of the Greek philosopher Julian, who were accused of injury against their enemies, the Spartan pupils of the philosopher Apsines (Eunapios from Sardes, vita sophist. 9,2). Understanding the anecdote as a reliable source, Karambelas tried to filter legal aspects from the story to show also the interdependence of Reichsrecht and Volksrecht. The respondent was Philipp Scheibelreiter (Wien).

The third day of the meeting started with the paper by Ana Lúcia Curado (Minha), *Emotion, life history and law. Demosthenes and the architecture of the speech Against Meidias*. In the speech Demosthenes plays the role of an advocate of the *demos* and of the laws of the *polis*: this, according to Curado, can be seen from the type of procedure he chose. Against Meidias, who had slapped him into his face in the theater, Demosthenes did not use a private action (like a *dike aikeias* or a *dike blabes*), but a *probole* in the *ecclesia*. So Demosthenes turned his private affair into a public cause. The speaker bases his arguments on constitutional principles by appealing to the judges' honor to decide the case in favor of Demosthenes for no other reason than for deciding in accordance with the Athenian laws. On the other hand, Demosthenes, as Curado showed, refers to many legal documents which – although they are not quoted literally – are used in the conduct of his arguments. The respondent was Michael Gagarin (Austin).

Stephen Todd (Manchester), *Death and religion in Athenian law: identifying pollution?*, focused mainly on Athenian sources connected with "unnatural deaths", which as a broader concept does not only refer to homicide law. Todd gave a survey listing the different Athenian courts, each competent for trials concerning a special type of capital crime, well attested in Demosthenes 23.65-79 and in the *Athenaion Politeia* 57.2b-4. One important consequence of being sentenced to death and executed in case of murder or manslaughter was connected with the question of burial: inside or outside Athens? Here the sources mainly refer to traitors: according to Thucydides 1.138, even the repatriation of their bones to be buried in Athens was an illegal act. Todd further on discussed the different types of execution like drinking hemlock or the *apotympanismos* and contrasted it also with the elder practice of throwing the sentenced party in the quarry (*eis barathron*). Equally important is another question raised by Todd concerning the role of the executioners and the pollution they suffered by doing their job. The respondent was David Phillips (Los Angeles).

Edward Cohen (Philadelphia), *Athenian legislation limiting male prostitutes' political rights*, argued against the common view that prostitution in Athens was practiced almost exclusively by slaves and foreigners; the correlation – which the Athenians were well aware of, as Aesch. 1.13 shows – between the adoption of a proscriptive legislation and the prevalence of the objectionable behavior, together with the examples provided by many ancient sources – which cannot be dismissed as mere slanders, as scholars sometimes do – demonstrate that a good number of Athenian men (as well as women) were prostitutes (*i.e.* had received a *misthos* in the context of a sexual relationship). Accordingly, the Athenian legislation about male prostitution, as well as the procedures of *dokimasia rhetoron* and *graphe hetaireseos*, were meant to be both an important response to actual acts of prostitution by well-known Athenian political leaders, and an attempt to fight corruption in public life by denying political rights to individuals who, with their practice of different kinds of lucrative trade (pros-

titution included), had shown an excessive lust for money. The respondent was Adriaan Lanni (Harvard).

The last day of the meeting was opened by Michele Faraguna (Milan), *Water rights in archaic and classical Greek cities: old and new problems revisited*. Starting from some passages in Plato's *Laws* concerning the legislation on water and water rights, Faraguna used Plato's discussion as a basis for the classification of the ownership of water rights and water resources, then comparing each point of the resulting model with the surviving documents that in different Greek *poleis* regulated the use of water, both for drinking and for irrigation. Although the analysis of these documents shows some general and recurrent rules (concerning for example the limit generally provided for the amount of public water an individual was entitled to draw in his property, or the divorce of underground rights from surface rights), Faraguna concluded that it is hard to think of a coherent legislation on the topic, similar to that related to silver mines. The respondent was Athina Dimopoulou (Athens).

Due to the absence of the speaker, the last paper by Lene Rubinstein (London), *Reward and deterrence in classical and Hellenistic enactments*, was read out by Adriaan Lanni. Rubinstein began her paper by drawing a distinction between two types of rewards in the Athenian legislation: those promised for information leading to the denunciation and conviction of lawbreakers (*e.g.* the reward of one third of the money raised from the sale and the confiscation of property of the non-citizen convicted of unlawful cohabitation with an Athenian, or the reward of one hundred drachmas per tree to the one that denunciated the removal of olive trees), and those granted to volunteers who assisted in the enforcement of sanctions already imposed (*e.g.* in the process of *apographe*, where a financial gain was granted to the persons that offered information about movable and immovable items liable to confiscation). These data were then compared with the available epigraphical evidence of the legislation of other *poleis*, where the range of wrongdoings for which a reward is granted is quite wide, and includes treason, revolution, and offenses against the gods. Despite the difference with the Athenian legislation, where apparently there was no reward for the latter category of offenses, it is possible to detect some recurrent patterns underlying the rules in the different cities: for example, it is significant that the reward is usually offered to those who reported unauthorized possession of objects belonging to the state, or is granted in case of victimless crimes. At the same time, the dissimilarities between Athens and other cities can sometimes be considered as a consequence of their particular constitution. The response was delivered by Ilias Arnaoutoglou (Athens).

The meeting was concluded by the designation of Uri Yiftach-Firanko as organizer of the *XXI Symposion* in Tel-Aviv.