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PANAYOTIS D. DIMAKIS: *IN MEMORIAM*

*Σύμμεικτα προς τιμήν Παναγιώτη Δ. Δημάκη Αρχαία δίκαια και κοινωνία. Mélanges en l'honneur Panayotis D. Dimakis. Droits antiques et société, Athènes, Ed. Sakkoulas (www.ant-sakkoulas.gr), 2002, 700 pp., ISBN 960-15-0711-6.*

In 2002 the long awaited volume in honour of Panayotis D. Dimakis was published. Pupil of the eminent Italian legal historian U.E. Paoli, P.D. Dimakis he has been since 1969 Professor at Panteion University of Athens, teaching Civil Law and History of Legal Institutions. He has participated regularly in Symposia and meetings of SHIDA and he has played a major role in organizing most of the major conferences on legal history in Greece. His research is devoted to two different aspects of law and society in ancient Greek cities, (a) family and succession law, (b) women and law. The 37 contributions of the volume cover a wide spectrum of subjects and periods in legal history, spanning from Mycenaean kingdoms and Homeric justice to modern Greek law. The studies are listed in alphabetical order and are followed by summaries in French or German. The majority of contributions (22 out of 37) concern ancient Greek (Classical and Hellenistic) and Roman law, reflecting the main areas of interest and research of P.D. Dimakis.

In what follows I shall present the contributions in a chronological order. The volume opens with a short biographical note and a list of his publications, prepared by Dimakis' disciple and later colleague in Panteion University of Athens, Sophie Adam (pp. 15-23). The late I. Apostolakis in his *Demokratische Keimzellen in den mykenischen Königreichen* (in Greek <sup>1</sup>, pp. 53-77) continued his in-

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<sup>1</sup> Δημοκρατικά ζώπυρα στα Μυκηναϊκά βασίλεια.

vestigations in the world of Linear B tablets. In this contribution, he examines the political and administrative structure of the Mycenaean kingdoms, with special attention to officials. An eminent professor of civil procedure law in the University of Athens, K. Beys, *Κάνεις τον ουν χριν, και το μη χρέων πάθε* (*A study on revenge*) (pp. 91-113) traces the evolutionary path from revenge to a legally defined retribution based largely on Aeschylus' *Oresteia*. M. Bile in her essay *Quelques aperçus de la société gortynienne d'après les lois de Gortyne VI 56 - VII 10* (pp. 115-132) deals with the modern understanding of the terms *eleutheros*, *apetairos*, *Foikeus* and *dōlos* in the Gortynian laws (IC IV 72). She discusses especially questions arising from the provisions in columns VI 57 - VII 10, attempting to explain why the children of a union between an *Foikeus* and a free woman, when living at the woman's house remain free, while if they live at *Foikeus'* they are considered slaves. E. Cantarella in her contribution *Dispute settlement in Homer: once again on the shield of Achilles* (pp. 147-166) <sup>2</sup> returns to one of her favourite subjects, homicide in Homeric society and especially the scene in Achilles' shield. After a review of earlier theories (Wolff, Hommel, Gagarin, Thür, Westbrook) Cantarella rejects the thesis that the scene in the shield reflects Mycenaean administration of justice, influenced by the Near Eastern monarchies. For her, the essence of the dispute as depicted, is a matter of fact, that is whether *poine* was paid/received by the offended party. She interprets the scene as concerning a secular process originating not in private arbitration but in public control of self-help. A. Christodoulidou-Mazaraki in her essay *Das Naturgesetz und der Begriff der Gerechtigkeit bei Aristoteles* (in Greek <sup>3</sup>, pp. 167-200) examines the relation between natural law and the concept of justice in Aristotle. After an investigation of passages in Aristotle's *Rhetoric*, *Politics*, *Ethica Nikomacheia*, she observes that in Aristotle's writings there is a clear distinction between natural law, applicable to everyone and the law of *polis* particular for each human community. She concludes that Aristotle did not elaborate a consist-

<sup>2</sup> Also published as *Modelli giurisdizionali omerici: il giudice unico, la giustizia dei vecchi*, in E. Cantarella - J. Mélèze-Modrzejewski - G. Thür (hrsgg.), *Symposion 1997. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Altafiumara, 8-14 September 1997), Köln 1997, pp. 3-19.

<sup>3</sup> Ο φύσει νόμος και η έννοια της δικαιοσύνης στον Αριστοτέλη.

ent theory of natural law, because it did not suit his aim to understand the foundations of the political community. E. Cohen in his article *Not knowing one another in Athens* (pp. 201-234) continues to challenge commonly held views, established in the last 40 years. In his article he claims that Athens was not a «face-to-face» society, not even on a deme level. He adduces a series of observations about the untidy citizen registration process, the lack of updated citizen-lists, disputes about citizenship, and the patterns of deme residence (absentee landlords, mobile inhabitants). A. Dimopoulou-Piliouni in *Les décrets d'asylie du Koinon des Étoliens en faveur des Mytiliniens* (in Greek <sup>4</sup>, pp. 305-321), examines the historical background and the legal particularities of the *asylia* decrees of the Aitolian League in favour of the Mytileneans. In particular, in the late 3<sup>rd</sup> century BC, the Aitolians granted to the inhabitants of Mytilene immunity from seizure. These grants present several legally significant features such as, (a) collective award of *asylia* instead of individual, (b) issue by the Aitolian League, (c) immunity covered not only the territory of the Aitolians but of Mytilene, (d) there is unilateral grant of immunity and (d) in essence they constitute a grant of procedural rights to victims of piratical raids. H. van Effenterre, *Où en est-on sur la «cité grecque»? (pp. 323-340)* devotes his contribution to the ways of conceptualizing the ancient Greek *polis* in the histories of the last 130 years. He dresses a florilegium of approaches to the *polis*-phenomenon, starting with Fustel de Coulanges and finishing with Polignac and Morris. M. Gagarin in *Socrates and Antiphon: Intellectuals on trial in classical Athens* (pp. 397-404) brings forward some interesting similarities in the way Antiphon and Sokrates had dealt with the jurors. He explores and substantiates a suggestion by a Belgian social philosopher, E. Dupréel that there is an affinity between what Thucydides tells us about Antiphon's defence in 411 BC and Sokrates' defence in 399 BC as preserved by Plato. A. Helms in *Solon et la revendication de Salamine par les Athéniens* (in Greek <sup>5</sup>, pp. 405-415) is dealing with the role of Solon in annexing Salamis in the realm of the Athenian *polis*. Helms reviews and comments on the putative arguments used by Solon (reference in

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<sup>4</sup> Τα ψηφίσματα ασυλίας του Κοινού των Αιτωλών υπέρ των Μυτιληναίων.

<sup>5</sup> Ο Σόλων και η διεκδίκηση της Σαλαμίνας από τους Αθηναίους.

the *Iliad*, burial practices) and the ascription of the intervention to Peisistratos. E. Karabélias in *La fabrique d'armement dans l'Athènes classique* (pp. 437-450) re-assesses the pieces of evidence on the manufacturing of arms in classical Athens. Starting off with the description in the Aristophanic *Peace*, Karabélias discusses the arm manufacturing business of Lysias' family, reviving the interpretation of E. Will, *Le monde Grec et l' Orient*, that the information for Lysias' family business should not be taken at face value. The manufacture of arms relied on small workshops, while the production on a wider scale is a feature of the Hellenistic era. Cl. Mossé in *Les orateurs et le droit* (pp. 453-460) focuses on the speech of Demosthenes *Against Aristokrates* to trace the relation of the orator and the law. She provides a brief commentary underlining the legal principles (i) that only a lawcourt can impose a penalty on a citizen and not a decree, (ii) that a convicted murderer, if in exile, cannot be pursued outside the territory of the city and discusses the cases of justified homicide. E. Ruschenbusch in a concise essay *Platons Gesetze als Beispiel für ein griechisches Gesetzbuch* (pp. 565-568) explains through a comparison of *Laws* with the legal information from Athens, the reasons why the Platonic *Laws* can be regarded as the law code of a big city-state of Greek antiquity. Fr. Sturm in his *Die Rechte ostlokrischer Siedler. Zur umstrittenen Inschrift von Galaxidi (Oiantheia)* (pp. 591-598) criticizes severely the interpretation of certain sections of the inscription on the establishment of a colony in Naupaktos by A. Maffi (*Sulla legge coloniarica di Naupatto (ML 20)*, in *Festschrift A. Kränzlein*, Graz 1986, S. 69 ff.). G. Thür in his contribution *Gesetzeskodizes im archaischen und klassischen Athen* (pp. 631-640) returns to questions debated a few years ago on codification in Greek antiquity. He argues that it is not possible to see codification in Draco's time in the second half of the 7<sup>th</sup> century BC. The law of Draco on homicide was re-inscribed in 409/408 BC; but the «revision of laws» following the restoration of democracy did not affect private, penal or procedural law. D. Tsirikas in *Wesen und Funktion der Hypothek im attischen und römischen Recht* (in Greek <sup>6</sup>, pp. 663-676) discusses, in modern Greek legal jargon and without references

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<sup>6</sup> Φύση και λειτουργία του θεσμού της υποθήκης στο αττικό και ρωμαϊκό δίκαιο.

to sources, the legal nature and function of mortgage in satisfying the creditors' claims in Attic and Roman law.

In the area of law in Hellenistic and Roman Egypt, J. Mélèze-Modrzejewski has dedicated to the honoured his contribution *L'ordonnance sur les cultures: Droit grec et réalités égyptiennes en matière de bail forcé* (pp. 451-452) on the royal ordinance imposing the cultivation of land in second century B.C. Egypt. J. Hengstl, *Zum rechtlichen Sprachgebrauch in Petitionen der Ptolemäerzeit* (pp. 417-436) deals with the use of language in the petitions of the Ptolemaic era. With ample documentation available, J.H. distinguishes between practitioners of law and the functionaries of the state on the one hand, and scribes of private letters on the other hand. The former, despite lacking in legal terminology, demonstrate an ability to describe accurately the facts. In contrast, the scribes are less exact. The author entertains the possibility of expert training on the use of vocabulary but not law or rhetoric. H.-A. Rupprecht in *Ebevertragliche Regelungen und urkundliche Praxis* (pp. 543-564) <sup>7</sup> examines the clauses concerning the conduct of spouses in wedlock in Ptolemaic and Roman Egypt. These clauses were devoid of any juridical value, their violation was usually followed by pecuniary penalties. They were not connected to divorce and complaints did not lead to penal sanctions.

Three important contributions in the area of Roman law are offered by H. Ankum, P. Fuenteseca, and M. Talamanca. H. Ankum in *Justinien C. 6.2.22 pr - 3a de 530 après J.C. et la légitimation active à l'«actio furti» en cas de vol d'une chose prêtée dans le droit romain classique* (pp. 35-52) <sup>8</sup> discusses a passage from Justinian's *Codex* and the controversy about the legitimization of an *actio furti* in case of theft of an item borrowed or left in custody. He concludes that the nature of sources makes it difficult to ascertain what the rule was in classical Roman law. P. Fuenteseca, *La función de los recuperadores a la luz de dos documentos epigráficos: tabula contrebiensis y*

<sup>7</sup> A shortened version in English appeared in «Scripta Classica Israelica» 17 (1998), pp. 60-76.

<sup>8</sup> Also in «RIDA» 47 (2000), pp. 463-479.

*le irnitana* (pp. 341-396) examines the role of *recuperatores* in the procedure of a Roman suit, under 3 headings: the name, *recuperatores* and the process *de repetundis*, *iudicium recuperatorium* and *iudicia imperio continentia*. He discusses in detail the role of *recuperatores* in international affairs, in cases of *iniuria*, in aggravated theft, violation of tombs and *causa liberalis*, *actiones populares*, *vadimonium*, *in ius vocatio*, *publicani*. M. Talamanca in *I «gentiles» ed i «bona liberti» in Cic. Flacc. 84-89* (pp. 599-618) deals with a problem of succession law, particularly the succession in one's property of the *gentiles* in the late Republican era.

In the area of Byzantine law, C.A. Bourdara, *Das Leben und die Wunder des heiligen Demetrios als Quellen juristischer Informationen* (in Greek <sup>9</sup>, pp. 133-145) is mining the hagiographical tradition of St. Demetrios (the martyrdom and his miracles) for pieces of legal evidence. The author finds information concerning mainly penal law, the reason for prosecuting Christians in the early 4<sup>th</sup> century AD, and execution of death penalty. The miracles provide a wealth of evidence for public law and administration. M. Tourtoglou, *Korrektur der byzantinischen juristischen Quellen* (in Greek <sup>10</sup>, pp. 641-644) presents some corrections in the texts of *Ecloga ad Prochiron Mutata* 34.1, *Synopsis Basilicorum* and *Hexabiblos* 6.6.20. Sp. Troianos in his *Aus der Pathologie der juristischen Hermeneutik: Der Fall «κανών»* (in Greek <sup>11</sup>, pp. 645-662) discusses the interpretation of the work *kanon* in the Byzantine legal literature. He concludes that *kanon* does not mean a holy canon.

Four contributions deal with particular features and personalities in the Greek speaking communities in Ottoman Greece and in the 19<sup>th</sup> century Greek state. D. Seremetis, *Der Jurist Konstantinos Stef. Tattis (1860-1926) – eine historische Figur in Nordgriechenland* (in Greek <sup>12</sup>, pp. 569-590) examines the family background and political activity of St. Tattis in local community politics in Ottoman Thes-

<sup>9</sup> Ο βίος και τα θαύματα του Αγίου Δημητρίου ως πηγή νομικών πληροφοριών.

<sup>10</sup> Διορθωτικές παρατηρήσεις σε βυζαντινές νομικές πηγές.

<sup>11</sup> Από την παθολογία της νομικής ερμηνευτικής: η περίπτωση του «Κανόνος».

<sup>12</sup> Ο νομικός Κωνσταντίνος Στεφ. Τάττης (1860-1926). Μια ιστορική μορφή στο βορειοελλαδικό χώρο.

saloniki of the late 19th and early 20<sup>th</sup> century. C. Vavouskos, *Bemerkungen zum Erbrecht von Santorini im Zeitalter vor der Revolution* (in Greek <sup>13</sup>, pp. 689-696) presents some remarks from a comparison of two legal documents, the compilation of customs of the island of Santorini of 1797/1799 and the response of the local authorities to the administration of justice in 1834, concerning succession law. C.G. Pitsakis, *Droit romain et droit gréco-romain dans les manuels grecs de la période post-byzantine: L'emploi idéologique* (pp. 513-542) presents a historical overview of the major legal compilations of the late Byzantium and Ottoman Greece, and their influence and ideological use in the nascent modern Greek state. St. Perentidis in his contribution *Constantin Harménopoulos et les saints canons: son classement thématique et l'inviolabilité du texte canonique* (pp. 501-512) deals with a less well-known aspect of C. Harmenopoulos' activity, the Epitome of Holy Canons. The compilation is organised in thematic order, a practice not used at Harmenopoulos' time. The author presents how Harmenopoulos proceeded and responded to problems.

Eight studies deal with modern law, two of them concerning family law, the recent reform of adoption law (the late Prof. I. Deligiannis, *Conditions et procédure de l'adoption des mineurs selon la nouvelle loi hellénique no 2447/1996*, pp. 251-303, in Greek <sup>14</sup>) and the legal framework of fostering in Greek law (P. Agallopoulou, *L'institution des familles nourricières*, pp. 25-34, in Greek <sup>15</sup>). The procedural principle of *jura novit curia* and its application on determining the dispute is discussed by I. Nikolakopoulou-Stephanou in *Der Streitgegenstand und der Grundsatz «jura novit curia». Die Notwendigkeit einer Korrektur durch den Gesetzgeber* (in Greek <sup>16</sup>, pp. 461-472). The late professor of Administrative law in Panteion University, D. Corsos presents a historical essay on the reception of the «Conseil d'Etat» in the 19<sup>th</sup> century Greek kingdom and its

<sup>13</sup> Παρατηρήσεις εις το κληρονομικόν δίκαιον της Σαντορίνης κατά τους προεπαστατικούς χρόνους.

<sup>14</sup> Προϋποθέσεις και διαδικασία τέλεσης της υιοθεσίας ανηλίκων κατά το νέο δίκαιο (N. 2447/1996).

<sup>15</sup> Ο θεσμός της αναδοχής ανηλίκου.

<sup>16</sup> Το αντικείμενο της δίκης και η αρχή *jura novit curia*: η ανάγκη διορθωτικής παρέμβασης του νομοθέτη.



firm establishment in the second decade of the 20<sup>th</sup> century (*Die historische Entwicklung der Einrichtung des Verwaltungsgerichtsbofs*, in Greek <sup>17</sup>, pp. 235-249). E. Bessila-Makridi in *Das System der lokalen Selbstverwaltung in der griechischen Verfassungsgeschichte* (in Greek <sup>18</sup>, pp. 79-90), reviews the forms and the status of the different levels of local authorities and administration in post-1821 modern Greek constitutional history. In *Orthodoxie, modernité, et politique dans l'État grec contemporain* (pp. 473-500), A. Paparizos explores the difficult and sensitive interrelation of Orthodoxy, modernity and politics in modern Greece. In particular, the author examines the influence of the above interrelation on the (under) development of a civic society and on the formation of the Neohellenic identity. The contribution of A. Tsoutsos, *Le Conseil du Roi en France* (in Greek <sup>19</sup>, pp. 677-688) discusses the jurisdiction and organisation of the French Royal Council, precursor of the Napoleonic Conseil d'État. Closing this section, St. Theophanides in *From democracy to sophocracy: a wiser system of macro-organization of modern societies (Towards a better 21<sup>st</sup> century politico-economic system at the hands of knowledgeable people)* (pp. 619-629) proposes modifications to modern representative democracy along some very Platonic ideals of the rule of the wise men.

The volume concludes with a personal account of P.D. Dimakis by the poet and his close friend, N. Phokas.

The volume, despite a fair number of typographical errors that have crept in, is a fitting present to a person who had served passionately legal history of all periods in Greece.

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<sup>17</sup> Ιστορική εξέλιξη του θεσμού του Συμβουλίου της Επικρατείας.

<sup>18</sup> Ο θεσμός της Τοπικής Αυτοδιοίκησης στην ελληνική συνταγματική ιστορία.

<sup>19</sup> Το συμβούλιον του βασιλέως στην Γαλλία.

Alberto Maffi

## NUOVE PUBBLICAZIONI

E. Ruschenbusch, *Kleine Schriften zur griechischen Rechtsgeschichte* («Philippika. Marburger altertumskundliche Abhandlungen», 10), Wiesbaden, Harrassowitz Verlag, 2005, 248 pp.

La raccolta in ordine cronologico degli scritti minori dell'A. permette di seguire il costante interesse per il diritto greco di uno dei maggiori storici greci di lingua tedesca. Vengono qui ripubblicati articoli apparsi fra il 1956 e il 1997, ma anche la breve e fondamentale monografia, *Untersuchungen zur Geschichte des athenischen Strafrechts*, apparsa nel 1968. Significativa è la dedica del volume a H.J. Wolff, a cui l'A. era legato da un profondo rapporto scientifico e di amicizia. Scorrendo l'indice del volume balza evidente il particolare interesse dell'A. per la figura di Solone. Si veda in particolare l'articolo *Solon*, pp. 204-230 (apparso originariamente in «ZPE» 100 [1994]), che conclude un'importante serie di studi soloniani dedicati rispettivamente: alla legge sul testamento (pp. 59-62), all'origine del tribunale eliastico (pp. 63-66), all'ereditiera (pp. 193-196). D'altronde le stesse *Untersuchungen* del '68 prendevano spunto dalla raccolta dei frammenti delle leggi soloniane, pubblicata dall'A. due anni prima a seguito di un lavoro di raccolta durato più di un decennio. Un ulteriore gruppo di studi è dedicato a un altro tema che ha molto interessato l'A.: si tratta dello studio dell'arbitrato pubblico nell'Atene del IV secolo a.C.

In molti degli studi qui ripubblicati emerge un principio di metodo, che merita di essere attentamente meditato dagli attuali cultori del diritto greco antico, soprattutto ateniese (si veda in particolare il contributo che reca il titolo, alquanto provocatorio, di *Über die rechte Art, das Recht in Athen zu studieren*, pp. 185-187, apparso in origine in *Symposion* 1985). Si tratta della convinzione che il diritto