Heinz Barta, *„Graeca non leguntur"? Zu den Ursprüngen des europäischen Rechts im antiken Griechenland*. Vol. 2: Archaische Grundlagen. Part.1 & 2. Wiesbaden, Harrassowitz 2011. XVIII + 766 & XVI + 522 pp. ISBN 9783447062787 and 9783447065870.

Greek legal thought has preoccupied scholars for the last two hundred years, resulting in numerous notable monographs including Erik Wolf's, *Das Griechische Rechtsdenken*, as well as *The Administration of Justice from Homer to Aristotle* by Robert Bonner and Gertrude Smith. Heinz Barta's (henceforth B.) *'Graeca non leguntur*?' is a worthy successor to this tradition, both for its coverage of all imaginable spheres of Greek law, and for its comparative approach which integrates theories and observations originating from disciplines that are, as B. rightly and repeatedly states, rarely discussed in studies of Greek law. B. is an "outsider", meaning that he entered the field of Greek law relatively late, after specialising throughout his career in civil law. As such his approach is fresh, provocative and stimulating.

The second volume alone consists of 1,300 pages, and focuses on the accomplishment of two legislators, Draco and Solon. But the author does not merely report the legislative activity of these two lawgivers. Rather his goal is to demonstrate how the foundations laid by their respective activities went on to influence Greek, Roman and even modern legal thought. The Greek heritage, claims B., is often overlooked, even by students of Roman law, and it is B.'s goal to restore it to its due position. Alas, the extent and depth of B.'s scholarly efforts make it rather difficult to address all of the ideas and theories contained in his exhaustive study within the span of this brief review.

The first part of the second volume begins with a short introduction to the historical importance of Solon, and the principles of his legislation. Even at this early stage B. introduces some of the themes that will occupy him later in the book, notably the principle of equality, and the rise of the concept of the legal person (32–47). The text is sometimes hard to follow, primarily due to B.'s frequent digressions and the not always consistent use of large and small script, but the author makes amends for these shortcomings by providing frequent summaries and introductions that allow the reader to follow the main threads of his argument: see in particular, 1. 67-74: resumé of various Solonian innovations, 2. 182-189: summary of the same topic.[1]

Draco, however, is the focus of the early chapters. Little has come down to us that directly and undisputedly derives from Draco, and our key evidence is found in *IG*^{3} 104 (German translation in vol. 1 p. 121), the so-called law on unpremeditated murder. Avenging the violent death of a relative is a recurring theme in pre-state societies, and its restriction was a task of primary importance for the evolving state. The right to perform an act of vengeance was subject to state supervision and even, according to the author, entirely abrogated (e.g. 123), once procedures had been set by state courts to deal with the prosecution of manslaughter. The text of *IG*^{3} 104 also introduces the important distinction between premeditated murder and unpremeditated manslaughter, and marks the abandonment of the principle of strict liability (*Erfolgshaftung*), the idea that any act of murder should be met with an equally severe punishment. Rather it now gives way to the new notion, that the *mens rea* and other circumstances of the act, including that of just cause, are to be taken into consideration (in particular Ch. 6: 'Drakons Gesetz über die Blutrache' (1.265–292)).

Starting out from this inscription, B. studies the development of various forms of differentiation in cases of manslaughter (Chapter 4: 'Das Entstehen der Rechtskategorie "Zufall"' (1.130–211), Chapter 5: 'Vom sakralen Sühnderecht zur säkularen Schuldrechte' (1.212–264)). The study focuses on a number of sources, including three works by the fifth-century BCE speech writer Antiphon — the first and second tetralogies and *On the Choreutes* — the *Rhetorica ad*

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1 The reader can also consult useful glossaries at the end of each volume (1.607-634, 2.376-40).

Alexandrum presumably by Anaximenes of Lampsakos, the Aristotelian *Magna Moralia*, the *Nicomachean Ethics* and the *Rhetoric*, as well as Plato's *Nomoi*. Within this context, B. studies the development of the concepts of intention, negligence, accident and emotional condition (*Affekt*), and their impact on the perpetrator's liability.

The remainder of the book is devoted to Solon, the earliest relatively well-documented historical figure in the Greek world. The figure of Solon continued to attract interest throughout antiquity, and his unprecedented prestige is due in part to his outstanding accomplishments, but also to the fact that virtually all our literary sources are Athenian, or Athenocentrist. It is understandable that there would be greater interest in Solon than in contemporary non-Athenian reformers, but — and this *caveat* is, perhaps, not duly elaborated by the author (2.203-209) — it is equally necessary to take this Athenian bias into account when addressing the question of Solon's originality in the Archaic context. If Solon's reputation as a state theorist surpasses (e.g.) that of Thales, it is perhaps because Athens would, in the coming century, become a hegemonic superpower and cultural center, while Miletus was razed to the ground.

Chapters 7 ('Wegweiser zur "Eunomia"', 1.293-310) and 8 ('Menschliche Gerechtigkeit und göttliches Gesetz': 1.311-318) are dedicated to the historical, social, religious and ethical background of Solon's legislation. It is not easy to draw a thematic distinction between chapter 9 ('Rechtssubjekt and Demokratie', 1.318-441) and chapter 10 ('Solons Gesetzgebung', 1.442-605), as both relate to the constitutional context of Solon's reform, to its broader Pan-Hellenic context, and to its consequences. The observation that Solon's reform established the *persona iuris* — in particular, the right of an individual to form contracts and dispose of his property free of family or clan bonds [was this *really* an immediate consequence of Solon's reforms?[2]] — propels a detailed discussion of the Greek concept of contract, which focuses on challenging Wolff's *Zweckverfügung* theory and returns to the older "consensual" theory. The subject is treated in a lengthy discussion in chapter 9 (1.374-437), while another aspect of the same phenomenon, the evolution of the right to dispose of one's property *inter vivos* and *post mortem*, is discussed in chapter 10 (1.496-530), and the closely related concept of ownership, as well as the further development of the concept of legal personality in the case of Hellenistic endowments, are relegated to the three penultimate chapters of the second volume (Chapters 19-21, 2.296-343).

Chapter 11, ('Solon und die Polis', 2.1-45), goes back to the ideological, social and cultural background of Solon's activity. A detailed discussion of the ethics of two social strata, the aristocracy and the peasantry, illuminates the ethical background of Solon's legislative activity, as well as the individual laws. Of particular interest are the discussion of proverbs as reflecting the *Volksideologie*, and the study of a substratum of semi-legal customs, such as those relating to the *inter vivos* devolution of the family estate, which can be termed the "Laertes syndrome". It is in this chapter that B. introduces an important distinction between the two stages in the formation of Greek law: that of 'nomological knowledge' (following Max Weber) — a flexible and unwritten set of values which guides the administration of justice, and then written law, which first occurs in the form of a *thesmos*, and then in the democratically enacted "new" *nomos* (e.g., 2.35). As the author rightly asserts, without this move towards written law, it is difficult to understand the subsequent introduction of the principle of equity (chapter 13 (2.70-145)), a corrective used to adjust written laws to particular social circumstances (see, e.g., 2.113).

An excellent chapter is devoted to the *graphê hybreôs*, which was introduced, according to the author, around 450 BCE.[3] The *hybris* action, a public one, highlights and serves another principle of the Athenian city state: the principle of solidarity, and the duty of citizens to defend the polis

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2 E.g. D. Asheri, 'Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece', *Historia* 12 (1963) 1-12 at 1-4.

3 D.M. MacDowell, 'Hybris in Athens', *Greece & Rome* 23.1 (1976) 14-31 at 26-29.

against "outrage", that is any type of conduct which could jeopardize the social matrix. Within the procedural context, the *graphê hybreôs* forms a subsidiary suit, a general clause, that can be used instead of and in addition to actions concerning more concrete forms of violence. The subsidiary position of the *hybris* action is made evident, *expressis verbis*, in the city law of third-century BCE Alexandria (*P.Hal.*1. 210-213).

All chapters within B.'s monograph deal in detail with the theories of leading authorities on their respective subject(s). This may seem excessive to the reader, as it obstructs the flow and clarity of the argument; perhaps some of it could have been dealt with in extensive footnotes of the type commonly employed in the *Handbuch der Altertumswissenschaft*. But B.'s approach is of some merit, as it accords the reader a detailed account of the history of the research. The account is not always up-to-date; one might, for example, expect some discussion of the debate in the 1970s revolving around Fisher's study on *hybris*. Furthermore, the works of some authors who studied key themes in B.'s book — Josiah Ober and Mogens Herman Hansen are two good examples — are not duly represented, or even mentioned. But, of course, an *opus magnum* on the scale of B.'s monograph cannot be expected to cover all the relevant literature thoroughly. If there are some *lacunae*, they are often mitigated by a detailed discussion of key works from the early twentieth-century authors that are often neglected in other studies. One example is the *Griechisches Privatrecht* of Egon Weiss, which is not only a gold mine of information but also, in my view, the only exhaustive account on certain fundamental themes, notably the execution of debt (1.427-438); a further example is the work of Eberhard F. Bruck, whose studies on the development of endowment in the Hellenistic period are discussed in the broad context of ownership, burial rites and practices, and deeds of last will. B. convincingly uses the endowment as an example of a Greek institution that would subsequently penetrate the realm of Roman law. The chapters dealing with Bruck's research (Chapters 19-21, 2.296-343) are lucid, and generously commemorate one of the many German scholars of Jewish descent who were active in the field of Greek law before and after the Second World War.

Although B.'s book is excellent, the picky Classicist may find the work's merits somewhat obscured by language glitches that could have been easily avoided: γεγραμένος for γεγραμμένος (repeatedly!, e.g. 1.626), ἄνθροπος for ἄνθρωπος (2.140), inaccurate and incomplete sentences (2.200-201) and mistaken translations: e.g. 2.345 (ad Plat. *Nom.* 884a): κεκτημένον is not 'Besitz', but 'Eigentümer', as is also the correct translation on the preceding page!

One final note: I have never encountered a study that trumpets its own innovative nature quite so much as B's book. 'Bisher wurde es übersehen, dass...'*vel sim.* is a recurring expression, and in some cases the claim is not in good taste. This is especially notable in his treatment of H.J. Wolff (typical: 1.394. n. 2395): there is not, as B. claims, a "Wolff faction" — an army of disciples who at all cost would defend the baseless hypotheses of their master — but rather a growing group of scholars who have studied Wolff's numerous monographs and papers, and learned to appreciate his scholarship, precision and care. Of course, B.'s polemic style is yet another manifestation of his zeal and willingness to put to the test truths previously held to be unquestionable. A better edition would have made the book perhaps more accessible, but even as it stands, the monograph is an inexhaustible treasure of valuable information and ideas, and as such is warmly recommended to Classicists and Historians alike. I have certainly learned a lot.

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