

## BOOK REVIEWS

Derek Roebuck, *Ancient Greek Arbitration*, Oxford, Holo Books, The Arbitration Press, Oxford, 2001. xii + 401 pp. ISBN 0 9537730 1 9.

Derek Roebuck was until recently Professor of Comparative Law in Hong Kong, and much of his recent work has concerned arbitration. This book is the beginning of a history of arbitration. R. is concerned only with arbitration within a state, not with inter-state arbitration, and expresses the hope that his book will be of assistance to those involved in peaceful dispute resolution. R.'s general conclusions, neatly laid out on pp. 358-9, must leave one in doubt as to whether that hope will be fulfilled: the last one reads 'While, from the first, the parties were concerned with their own rights, the community's purpose in providing a system of public arbitration was to preserve harmony'. But it is perhaps not for a classicist to presume to know what lawyers will find of assistance.

The core of the book (pp. 51-343) takes the form of a collection of translated Greek sources mentioning arbitration, organised by genre but in a way that is broadly chronological. Thus R. begins with a chapter on Homer and Hesiod, moves on through chapters on drama and 'the historians' to one on 'the philosophers' (who include Xenophon), and then successive chapters on the orators, Demosthenes (treated separately), new comedy, inscriptions and papyri. R. has basically looked up in *TLG* every passage in which words of a *dait-*, *brabe-*, *epitre-*, *epitra-* or *neik-* root occur, and if those passages turn out to involve arbitration R. quotes and discusses them. The only area in which he advertises that he is seriously selective is epigraphic.

The first part of the book sets out the method employed in the core and R.'s principles of translation (with an excursus on the meaning of the *dait-*), discusses the various possible steps in dispute resolution, and defines the terms used, in particular arbitration itself:

Arbitration is the processes (other than litigation) by which parties to a dispute submit it to a third party to resolve, if necessary by decision, and by which that resolution is reached (p. 22).

R. notes that the strong distinction which he draws between arbitration and litigation can be found already in Aristotle and Cicero, with Aristotle (*Rhetoric* I.13.13-14) stressing the arbitrator's interest in equity (rather than the legal rule) and Cicero (*Pro Q. Roscio Comoedo* IV 6-11) stressing that in arbitration both parties expect to end up with something. Those two points form two more of R.'s general conclusions. In the last chapter of this part R. discusses 'Greek Legal Systems'. This is a somewhat curious chapter, which acknowledges that there was no one Greek system of law and concentrates mostly on the Athenian legal system (with three short paragraphs on Ptolemaic Egypt). One gets a very strong impression that R. thinks in terms of judges, justices of the peace, juries, lawyers etc. and so divides his treatment between the closest equivalents he can find to these (compare his use of the term 'customary law' to translate *themis* and his discussion [e.g. p. 206] of Athenian practice in terms of 'customary law'). It is hard to think that a summary organised like this is well designed to increase the understanding either of the lawyer or of the student of ancient history.

What of the core of the book? To whom is this collection and discussion of *testimonia* relating to arbitration of interest or significance? If R. is really interested in passing on to professionals in the field of arbitration some lessons from the Greeks, this comprehensive collection of the bits of Greek texts that refer to arbitration is surely not the way to achieve it. If the question is how the arbitration procedure was organised in Athens, the answer is given much more efficiently in e.g. the relevant few pages of Todd's *The Shape of Athenian Law* (nothing in which is proved false in this account). But if the question is about how the procedure worked in practice, then rather than brief mention of every known instance, when in most cases what we know is minimal, what is appropriate is in-depth analysis of the best known cases.

The problem with R.'s method reveals itself at the very beginning. R. notes that 'The first dispute arises in the first lines of the Iliad' (p. 54) and then quotes, selectively, from Iliad 1.1-9. The story of this first dispute is nothing else than the story of the Iliad, Achilles' angry reaction to Agamemnon's taking away of Briseis and their reconciliation. But R.'s Iliad then proceeds solely through lines 1.224-244, 9.632-638 and 19.172-183, and is interspersed with the Iliad's mentions of other acts of dispute resolution — by Priam (3.108-110), at the hands of the gods (16.386-388), and on the Shield of Achilles (18.497-508) — with each passage discussed in the order in which the relevant lines occur in the Iliad. All of this means that we never get a continuous exposition of the stages of Achilles' dispute with Agamemnon, and there is no discussion of any of the myriad ways in which the Iliad explores that dispute and its resolution without mentioning dispute resolution terms (less than a page covers the whole Book 9 embassy, for example). A good literary study of the Iliad would yield modern arbitrators far more insight than this rather pathetic collection of quotations (from which 'alien' elements, such as the attribution of stubbornness to divine intervention at 9.637, have been removed from the translation/paraphrase).

The problems with the book are not limited to its being ill-designed for the job it sets out to do. It is not so much that this book is prone to error, though there is much to quibble with in the translations and errors of fact do occur — the restoration of Athenian democracy is put in 401 B.C., and the Arginousai trial is treated as happening in a court. Nor is it simply that R. is, quite forgivably, not up to date on some of the texts he treats (particularly epigraphic texts). It is rather that the general classical framework which R. brings to bear is insufficient. Take his treatment of Athens after 323. First we read (p. 184): 'Dinarchus lived for more than thirty years after that, well into the Hellenistic age, but by then Attic oratory was as moribund as the democracy on which it depended'. Then on pp. 247-8 we are told further: 'Democracy was snuffed out finally when the Macedonians destroyed democratic forces in 262 B.C. ... The world of the Athenian shrank, not back to the coarseness of the Cyclopes but nevertheless to the size of family groups, isolated from one another by the fatuity, if not the danger, of corporate effort at the city level in a world of expanding empire'.

It is questionable whether the gains from R.'s experience of other legal systems make up for the costs of his lack of classical experience. R. has evidently written the sort of book that he finds interesting, but I seriously doubt whether anyone else will share his view.

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Karl-Wilhelm Welwei (unter Berücksichtigung des Nachlasses von G. Prachner), *Sub corona vendere. Quellenkritische Studien zu Kriegsgefangenschaft und Sklaverei in Rom bis zum Ende des Hannibalkriegs* (Forschungen zur antiken Sklaverei 34), Stuttgart: Verlag F. Steiner, 2000, viii + 181 pp. ISBN 3 515 07845 2.

*Habent sua fata libelli.* Bestätigung findet diese Einsicht einmal mehr durch Welweis Büchlein. Die im Vorwort (vii-viii) umrissene Vorgeschichte sollte man kennen, um die Studie in ihrer vorliegenden Form angemessen zu verstehen und zu beurteilen.

Am Anfang steht ein nachgelassenes, unvollendetes Manuskript aus der Feder von G. Prachner, das Welwei 1994 auf Bitten der Mainzer Akademie zur Bearbeitung und Herausgabe angenommen hatte. Wie problematisch diese Übernahme letztlich geworden ist, erhellt aus einer Vielzahl von Fussnoten, in denen Welwei Prachners Positionen distanzierend umreißt. Herausgekommen ist dabei ein *inhaltlich* revidiertes Buch, für das Welwei die Verantwortung übernimmt, indem er es unter seinem Namen erscheinen lässt. *Konzeptionell* respektiert er Prachners Vorgaben und hierauf basierende Erwartungen der Akademie. Eine gleichwohl merkliche Distanz äussert sich allerdings in der stark unterschiedlichen Beurteilung der herangezogenen Quellen, die