

*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.

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The 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 focussed 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 recognising 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 identifying 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. The essays lean on contemporary debates found in a variety of fields, in particular the social sciences and economics. This reflects the studies of the honourend of the volume, whose work is well-know (and admired) on both sides of the Atlantic (see for instance *Landlords and Tenants in Imperial Rome*). 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. The essays are best when these theories are examined very closely through the available evidence. They are weakest when they spend too long on the theories, on the 'newness' of the approach, or suggest overly strong connections between law and society, instead of being led by the evidence.

In their introduction, Dennis Kehoe and Thomas 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. Adriaan 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). Lanni recognises the dominance of the cultural, and in parts evolutionary, perspective, reflecting strongly held religious and social beliefs, against a backdrop of political growth from the center. He also recognizes the reading of these collective sanctions as pollution, with a *miasma* infecting wider society. However, his piece is different in how well it leans on modern legal theory; namely reading these sanctions as instrumental devices designed to deter others. This is very different to standard interpretations of Athenian law, and the conclusion reached is then rather persuasive (20). The argument put forward by David 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, is equally convincing. 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, Dennis 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, Michael Leese paints a somewhat myopic portrait (32–45). In focussing only on the economic theory we naturally ignore the wider social and political realities governing ancient Greek marriage. There is also the concern over to what extent the importance of the dowry reflects wider societal concern (35–36). Those examples chosen stand out for exactly the reason they did to contemporaries; because they did not reflect the Greek norm. Here then the reliance on economic approaches does not really bring together legal thought and social concerns. Cynthia 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. Here again the role of law, and its links to society, do not entirely match up. Although law is an important part of Roman identity, the chapter does not fully persuade when viewing the "role of law in building the common culture of the Roman Empire" (68). Lauren 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. In one sense this is because there is no clear engagement here with the more modern theories, but also because the ideas of justice appear rather more literary. Thomas McGinn's essay tests important theses (Kehoe & Bannon; Volterra) concerning Roman Private Law (133–166), but although it is one of the longer essays

too much space is given to the modern approaches. The conclusion offered, because of the dominance of leaning on these theories, does not in itself suggest a strong enough perspective on the realities of Roman law. The evidence has been lost slightly through reinterpreting Kehoe & Bannon (occasional intervention on behalf of the less privileged) and Volterra (relying on Justinian's *Digest* and *Codex* viewing the entire system as focussed towards the less politically powerful and economically dominant). The final chapter (barring Clifford Ando's afterword) is by Charles Pazdernick, and it looks at mixed marriages through Justinian's legislative efforts (167–182). There is much to praise here, however again the concern rests over the presumed relationship between law and society. It tells us so much more about the political ideals of Justinian and his court; rather than the realities of those effected by it.

To conclude, this is a collection of somewhat mixed quality. It does as Bruce Frier's has shown 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, and in demonstrating overly strong connections between society and law, rather than being led by what the sources really can tell us. The book is an important one, but not quite the call to arms that is needed. The relationship between ancient law, and ancient society, is never easy to see. New theories can perhaps allow different questions to be asked, but we must always place that evidence firmly in its immediate context.