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Michael Gagarin, WRITING GREEK LAW
Cambridge: Cambridge University Press (*www.cambridge.org*), 2008. xi + 282 pp. ISBN 978052188661. £55.

In recent decades orality and writing in ancient Greek culture have become fashionable topics. In his *Early Greek Law* (1986) Michael Gagarin held a theoretical position based on Maine's *Ancient Law* (1861) and Hart's *The Concept of Law* (1961), namely that before writing one cannot generally speak of law. Without entering that broad philosophical discussion, the late Raymond Westbrook's refutation of such evolutionary models should nevertheless be noted. From Ancient Near Eastern sources Westbrook demonstrated that human societies used highly developed legal rules long before writing came into existence (see "The Early History of Law" (2010) 127 Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom Abt) 1). Classicists have also recently tended not to explain the origin of law in a philosophical way, but rather to focus on the question of why writing in archaic Greece – borrowed from the Phoenicians around 750 BC – very soon produced legal texts, and what influence writing had on the development of

Greek law. Gagarin also now follows a strictly empirical approach. His new book is based on studying the earliest stone inscriptions, mostly from Crete. His conclusion is that the reason for publishing statutes on stone was the free access to law for every citizen.

The book is divided into ten chapters with appendices including Greek texts cited in the various chapters. Following the book as a whole, the Introduction and Conclusion are both entitled "Writing Greek Law". Introducing his topic, Gagarin scrutinises in turn the implications of each of the three words of his title. He notes in relation to writing how, by adding signs for vowels to those for consonants, the Greeks first invented a fully alphabetic script, easily legible for everybody. He then states that his examination of law and writing in Greece is necessarily confined to the period after the Bronze Age, clarifying that the earlier prehistoric period of Greek civilisation falls outside his treatment. In terms of *law*, Gagarin stresses a non-positivist view that "law may be a forum for regulating and even promoting conflict, and for negotiating community values, but at the same time, it prevents conflict from becoming warfare" (4). Summing up, Gagarin's most significant conclusions are that, in Greece, law began with an oral period. Following this period writing was used only for public legislation. Everybody had direct access to the statutes, written in ordinary, non-technical language. Legal professionals were absent. In contrast, trial procedure always remained oral, making law accessible to all members of the community. "To this end, Greek legislation regularly includes information about procedure so that those involved in litigation could learn for themselves, without professional help, how they needed to proceed" (243). These were also, so Gagarin argues, the features creating a unity of Greek law joining both democratic and oligarchic states.

In an exposition as accessible to a non-specialist reader as to a specialist one, Gagarin develops these ideas chapter by chapter. "Law before Writing" (ch 1) deals with the poems of Homer and Hesiod, which reflect law only indirectly. Undoubtedly the trial depicted on the shield of Achilles (Homer, *Iliad* 18.497-508) was oral; however, many questions remain open. Denying that "oral laws" constituted binding statutes, Gagarin maintains that "oral law" regulated disputes (33). "Writing and Written Laws" (ch 2) combines the issue of literacy – writing for private use is documented from 750 BC – with the first written statutes from about one hundred years later. This chapter gives an account of the physical appearance and the content of some twenty of the oldest stone inscriptions, mostly from Crete. Some were prominently published on temple walls, the longest with two lines of fifteen metres each. In "Why the Greeks Wrote Laws" (ch 3), opposing the views of many other scholars, Gagarin denies that political or social tensions were the reason for legislation and the "monumentalisation" of its products before an illiterate audience. The entire citizenry, he holds, enacted the laws and most citizens were able to read them; detailed legal provisions became necessary because of the increasingly complex legal situation in the – peacefully – expanding archaic Greek communities.

In chronological order the focus switches to Athens: "Why Draco Wrote his Homicide Law" (ch 4). Comparing the literary style with that of contemporary geometric vase painting, Gagarin stresses the indisputedly high technical quality of Draco's legislation (621/20 BC). However, the reason why Draco enacted his statutes on homicide will remain a matter of dispute. To explain it with the general pattern of demographical extension seems to be insufficient. A sound minority of scholars connects it to the Cylonian slaughter about fifteen years before. In any event, Draco's law code was real legislation, argued by Gagarin to "represent a stage in the gradual development of a more compulsory judicial procedure" (103). In "Oral and Written in Archaic Greek Law" (ch 5), procedure in Athens is the focus. Basically trials were performed orally, *dikē* (action) being contrasted with a special kind of written indictment (*graphē*) introduced later, most probably by Solon. Witness depositions were oral and, before the fourth century

BC, did not have to be filed as written documents. It should be said that the function of the archaic *thesmothetai* must still be regarded as unclear, despite Gagarin's own explanation for their role (115). Moreover, the chapter overlooks the importance private documents already had in archaic times. However, trials themselves were of course oral and every document had to be introduced by oral witness testimony.

The next two chapters return to Crete. "Writing Laws in Fifth-Century Gortyn" (ch 6) examines the structure and style of statutes and early law codes. But "Writing the Gortyn Code" (ch 7) is the core of the book. About 450 BC the famous Law Code of twelve columns (621 lines) was published on a stone wall and was nine metres in length. It did not come out of nothing. Grotynian legislators were able to formulate, organise, and publish laws in a technically perfect way. Comparing the Code with the Codex Hammurabi, Gagarin stresses the progress in "micro organisation" and the use of cross-references and retro-activity clauses. The Gortynian inscription was not royal or political propaganda, but rather enacted by the citizens, and from its appearance it was easily accessible to everyone for everyday practical use in litigation.

Legislation and trial procedure in classical Athens are well-known. "Writing Law in Classical Athens" (ch 8) first explores democratic legislation. After restitution of democracy at the end of the Peloponnesian war, re-writing the laws was necessary. In this special connection the term "unwritten law" (*agraphos nomos*) was introduced, not to be conflated (as Gagarin warns (185)) with its philosophical aspect. In litigation, hearings before the popular court (*dikastērion*) always remained oral, but documents to be read to the judges were presented in preliminary hearings before the magistrate. Generally, there is no doubt about all these observations. But, problematically, written legislation, contrasting with the restricted use of writing for litigation, is seen as a feature for the unity of Greek law (197). The next chapter also seems problematic: "Writing Athenian Law: a Comparative Perspective" (ch 9). Gagarin correctly stresses the restricted role of legal professionals in Athens: in contrast to Rome there was no formalism or obscure words to be explained by jurists. However, he misunderstands the Roman *formula* enacted by the *praetor* as formalism (218) and is seemingly not aware that trials before the *iudex privatus* or the *recuperatores* were also oral. Gagarin's criteria for "unity" would also encompass Roman law. Furthermore, though interesting, the remarks on English common law do not particularly help in understanding the law of the Greek city-states (*poleis*).

"Writing Law in Hellenistic Greece" (ch 10) has a twofold topic. On the one hand, legislation and litigation did not change substantially in the *poleis* under Hellenistic rulers. On the other hand, the Ptolemaic kingdom was so different that Gagarin, incorrectly, excludes its law from Greek traditions (243). Admittedly, administration and legislation changed and (by chance) hundreds of thousands of papyrus documents drafted by professional notaries are preserved, but the broad field of private law here escapes Gagarin's attention. The substantive law of sale, leasing, credit, mortgage etc followed exactly the patterns well-known from the Greek *poleis*. To neglect an essential segment of law – private law – from the topic of writing is a weak point in Gagarin's otherwise brilliant analysis.

The merits of the book nevertheless prevail. Gagarin draws attention to the physical appearance of Greek legislation published on stone. He stresses the accessibility of law to the citizens both in democratic and in oligarchic regimes. The absence of professionals like the Roman *iuris consulti* is evident. But at least in Athens, a litigant needed another kind of professional to win his case, the speech writer (*logographos*). Whether the rule of law was better in Greece (254 ff) or in Rome remains an open question.

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