ÖAW ÖSTERREICHISCHE AKADEMIE DER WISSENSCHAFTEN

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Nr. 306 (3 Lexikonartikel / *3 encyclopedia articles*, 2013)

Procedure, legal, Greek and Roman (1.500 Wörter); Proof, legal, Greek and Roman (1.500 Wörter); Syro–Roman law book (315 Wörter)

The Blackwell Encyclopedia of Ancient History (EAH), hg. von Roger S. Bagnall, Kai Brodersen, Craige B. Champion, Andrew Erskine und Sabine R. Huebner (2013)

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Standard Article

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Procedure, legal, Greek and Roman

1. Gerhard Thür

Published Online: 26 OCT 2013

DOI: 10.1002/9781444338386.wbeah13207

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Book Title

The Encyclopedia of Ancient History

Additional Information

How to Cite

Thür, G. 2013. Procedure, legal, Greek and Roman. The Encyclopedia of Ancient History.

Publication History

1. Published Online: 26 OCT 2013

- Abstract (/doi/10.1002/9781444338386.wbeah13207/abstract)
- Article
- References (/doi/10.1002/9781444338386.wbeah13207/references)

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Legal procedures in Greece – our best evidence comes from Athens of the fifth and fourth centuries BCE – and Rome have only some common features. The major commonality was that in Greece and in archaic and classical Roman law (up to the second century CE) lawsuits had to pass through two stages, one of preparation and one of decision. The first took place before a magistrate, in Athens one of the nine archons, in Rome the Praetor (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah20109/full), all of them belonging to the board of supreme officials of the respective

cities. In the second stage, chosen laymen rendered the decision. The reason for this division might have been, conjecturally, that judicial litigation in both societies originated in oaths to be sworn by the parties. The main difference was that Greeks never had confidence in the decision-making of a single layman, while in Rome a sole *iudex privatus* (private judge, *see* Iudex (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13124/full)) became usual in most private cases. Not until the postclassical period did Romans drop the strict division into two stages and magistrates or governors of the provinces generally decide cases on their own authority.

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Greece

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Main sources are the speeches of the ten Attic orators (Demosthenes etc.) and the Aristotelian *Athenaion Politeia* (*see* Aristotle, Constitution of the Athenians (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah04046/full)); the best general reference is Harrison (1971), see also Todd (1993) and MacDowell (1978). From outside Athens hundreds of stone inscriptions reflecting legal procedure are preserved, but no comprehensive book exists; for the region of Arcadia, see Thür and Taeuber (1994).

In Athens there were two types of actions, private and public. The first type, the Dike (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13081/full) (literally action, lawsuit; verdict, punishment), could be initiated only by a person who had suffered some wrong at the hands of the defendant, ranging from financial damage to the killing of a relative. A Graphe (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13108/full)

(literally writing) and some similar actions (*see* *Eisangelia* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13094/full); *Phasis* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13200/full)) were public in the sense that any person qualified to plead could sue a wrongdoer as a volunteer prosecutor (*see* *Boulomenos, ho* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13031/full)). Only a male adult citizen had the legal capacity to file a lawsuit; women and minors were represented by their tutors (*kurioi*, sg. *kurios*). Private cases of resident aliens (metics) fell in the province of the *polemarchos*, one of the nine archons, while foreigners could seek the protection of the courts only when international treaties existed.

Private and public trials generally followed the same scheme. After a private summons before two witnesses the plaintiff or prosecutor stated his claim or accusation to the magistrate and the defendant gave his response, both in writing. The magistrate fixed a date for the first stage of litigation, the pretrial session (*see* Anakrisis (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13016/full)), in some private cases performed as a *diaita* by a public arbitrator chosen by lot (*diaitetes*, *see* Diaitetai (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13076/full)) instead of the magistrate. In both types of pretrial sessions parties could prepare their arguments for the next stage, the main hearing. In these sessions they could question each other – therefore one can call the pretrial stage the "dialectic" one – and, as a matter of fairness, they had to disclose all the documentary evidence to be used before the court. The documents were kept safe for the hearing in sealed ceramic pots (*echinoi*; Thür 2008). Pretrial sessions could be extended over several days and often led to a compromise, to avoid appearing before the court. If a defendant protested the referral of the case to court, e.g., because of limitation of time, he could enter a Paragraphe (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah04232/full)

(lit. writing beside, i.e., beside the plaintiff's petition). Then the magistrate would be forced to bring this preliminary question to trial independent of the main issue.

In homicide cases three pretrial sessions (*prodikasiai*), presided over by the *archon basileus*, were necessary; in them, both parties swore solemn oaths proclaiming guilt or innocence, respectively. These oaths were sworn anew before the judges each time and the court had to decide by voting which of the two oaths was the better one (Antiph. *or.* 1.15). From Draco (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13089/full) law on homicide, 621/20 BCE (a copy is preserved as *IG* I³ 104, 409/8), one can conjecture that the magistrates formulated the wording of these oaths and imposed them on the parties. Combining this text with other archaic sources one can further conjecture that, before Draco, archaic Greek authorities settled litigation by imposing an oath – of decisive character – on only one party. Therefore dividing legal procedure into a preparatory and a decisive stage might have had its origin in (1) a preliminary session that resulted in a decree imposing an oath on one litigant, and in swearing that decisive oath (Hom. *Il.* 18.497–508); (2) a preliminary session imposing oaths on both parties, and a subsequent court session in which judges decided by vote which of the two oaths was the better one (Draco; Thür 1996 ; opposed by Gagarin 2009).

The opinions on the next stage, the decisive main hearing, are less controversial. In classical Athens this stage is well documented. A law court (Dikasterion (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13079/full)) was organized as a democratic institution to create, above all, equal opportunities for both litigants on their court day. Early in the morning laymen, male citizens over thirty years old, were chosen by lot to fill the court panels as judges (in modern parlance, “jurors”). On that day they had to conclude all the trials scheduled. Depending on the issues, the size of the panels varied from 201 to 2,501. Only in murder cases heard by the council

of the Areopagus were the judges known to the parties in advance.

Trials were organized in a very simple way. The parties each gave their pleas for exactly the same length of time measured out by a waterclock (*klepsydra*). When the clerk read aloud the documents filed during the preparatory sessions, the water was stopped. Witness testimony was also prepared as a document; the witness had only to confirm it by his presence. Neither questions by the judges or the presiding magistrate, nor cross-examination by the litigants, were possible (*see* Proof, legal, Greek and Roman (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13208/full)). Litigants had to plead in person, although supporters (*sunegoroi*) were allowed. All depended on effective speeches, often drafted by professional speechwriters (*logographoi*) acting as "ghostwriters" only. Therefore one can call the trial in court the "rhetorical" stage of litigation.

Immediately after the speeches the judges cast their secret-ballot votes without deliberating or giving reasons. The pebbles (or, later, bronze ballots) were counted and a herald announced the total: the claim had been approved or rejected. No judgment was formulated. Only after the trial could a party sue the opposing witnesses for damages because of false testimony. Summing up, in Athens litigation was a match (*agon*) between the litigants fought with exactly timed speeches, where the parties' characters and social reputation were also at stake (Lanni 2006).

Rome

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Main sources are the casuistic works of the classical Roman jurists from the first three centuries CE, compiled in Justinian's Digesta

(http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13078/full) (533 CE); most useful is the systematic approach by Gaius in the fourth book of his *Institutes* (translation and commentary by De Zulueta 1953 and Manthe 2004). An indispensable reference is Kaser and Hackl (1996); see also Nicholas (1962).

Roman jurists and modern scholars describe and analyze, above all, private litigation (for criminal procedure, see Robinson 2007). Three systems of procedure were successively normal in suits at Rome between citizens: (1) the *legis actiones*, going back to and beyond the Twelve Tables (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13255/full); (2) the formulary system, introduced by the *lex Aebutia* (ca. 150 CE) and generalized by Augustus; and (3) the Cognitio (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13048/full) *extra ordinem*, which gradually encroached on the formulary system during the Early Empire and by the time of Diocletian and Constantine had superseded it.

The two older procedures had in common a division into two stages, similar to the Greek pattern. The first stage took place at the magistrate's tribunal (*in iure*). Its object was to define the issue and to empower an unofficial authority, normally the *iudex unus* (or *privatus*), to hear and to decide it. The second stage (*apud iudicem*) was the trial by this appointed authority. The *praetor urbanus* accepted lawsuits between citizens, but could not decide the cases himself; the *praetor peregrinus*, competent for foreigners, and provincial governors were subject to no such restriction, but usually made use of the formulary system nonetheless.

There is only little evidence, and much conjecture, about the *legis actiones*. The general form was the *sacramentum*, commonly understood to have been at first an oath sworn by both parties, later a sum of money backing both parties' claims. For this type of procedure panels of judges are also mentioned. Parallels to the Greek pattern seem probable despite the fact that the Romans used much more fixed verbal forms.

The formulary system is much better known. Here the praetor was free to state the legal issue in a Formula (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13103/full), as a programmatic statement of the issue which the *iudex* was to judge. A treasury of legal experience was laid down in the Edict of the praetor in the form of entries enumerating the legal means for litigation. At the stage *in iure* the litigants and the praetor adapted these means for the case; subsequently the parties accepted the *formula* by *Litis contestatio* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13173/full). Proceedings before the *iudex* were oral and informal; the *formula* laid down the precise question that he was to decide. He was free to form his opinion by such methods as he thought best. Judgment (*sententia*) had to condemn or absolve the defendant, and *condemnatio* was always in a sum of money.

In the system of *cognitio extraordinaria* the magistrate heard the whole case and decided it. It was the origin of the modern procedure in which only the state administers justice.

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SEE ALSO: Archon/archontes (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah04039/full); Edict, praetor's (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13093/full); *Legis actio* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13161/full).

References and Suggested Readings

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5. References and Suggested Readings

De Zulueta, F. *(1953) The Institutes of Gaius. Oxford.*

Gagarin, M. *(2009) Procedure: archaic Greek law. The Oxford international encyclopedia of legal history, vol.* ***4****: 399–402. Oxford.*

Harrison, A. R. W. *(1971) The law of Athens, vol.* **2***, Procedure. Oxford.*

Kaser, M. *and* Hackl, K. *(1996) Das römische Zivilprozessrecht. Munich.*

Lanni, A. *(2006) Law and justice in the courts of classical Athens. Cambridge.*

MacDowell, D. M. *(1978) The law in classical Athens. London.*

Manthe, U. *(2004) Die Institutionen des Gaius. Darmstadt.*

Nicholas, B. *(1962) An introduction to Roman law. Oxford.*

Robinson, O. *(2007) Penal practice and penal policy in ancient Rome. London.*

Thür, G. *(1996) Oaths and dispute settlement in ancient Greek law. In* L. Foxhall *and* A. Lewis*, eds., Greek law in its political setting: 57–72. Oxford.*

Thür, G. *(2008) The principle of fairness in Athenian legal procedure: thoughts on the echinos and enklema. Dike* ***11****: 51–73.*

Thür, G. *and* Taeuber, H. *(1994) Prozeßrechtliche Inschriften der griechischen Poleis: Arkadien (IPArk). Vienna.*

Todd, S. C. *(1993) The shape of Athenian law. Oxford.*

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Proof, legal, Greek and Roman

1. Gerhard Thür

Published Online: 26 OCT 2013

DOI: 10.1002/9781444338386.wbeah13208

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Book Title

The Encyclopedia of Ancient History

Additional Information

How to Cite

Thür, G. 2013. Proof, legal, Greek and Roman. The Encyclopedia of Ancient History.

Publication History

1. Published Online: 26 OCT 2013

- Abstract (/doi/10.1002/9781444338386.wbeah13208/abstract)
- Article
- References (/doi/10.1002/9781444338386.wbeah13208/references)

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In ancient Greece and Rome the law of evidence was very similar. One can compare the system of proof administered in Athens in the age of the ten great orators, from the end of the fifth to the end of the fourth century BCE, with that used in the period of the classical Roman jurists, the first three centuries CE, when the "formulary system" of litigation generally prevailed (for terms used in this article and the general background *see* Procedure, legal, Greek and Roman (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13207/full)). Only for these periods are sufficient sources preserved, although no modern comparative legal study exists. Common features were: that all means of proof had to be disclosed to the opposite party during preparatory sessions before magistrates; in the main hearing, the lay judges were free to form their opinions of the evidence as they thought best. Only in the postclassical Roman *Cognitio* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13048/full) *extra ordinem* were formal rules on evidence introduced.

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Athens

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The best general reference is Harrison (1971: 133–54) with some corrections by Thür (2005 and 2008). Aristotle (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah04046/full) account of the five means of proof, "laws, witnesses, contracts, statements under Torture (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah22267/full), oath" (Arist. *Rh*. 1375a 24), is misleading. He only gives examples of what he calls, in a rhetorical sense, "non-artistic proofs." Laws (*nomoi*), however, have nothing to do with evidence in a legal sense. His account therefore refers to documents the clerk read aloud to the court with the waterclock stopped, not proof in general. Coming from outside the speech these documents did not belong to the "art" of rhetoric.

The only relevant judicial proof listed by Aristotle was witness testimony. Only free males were allowed to witness. Each litigant formulated beforehand the depositions he planned to use in court. Normally the wording was a sentence: "N. N. knows . . ." or "N. N. was present when . . ." In the preliminary hearing the prospective witnesses could agree to testify in court or swear an oath of disclaimer, that he "doesn't know . . ." (*exomosia*). In both cases the witnesses had to appear at the main hearing either to confirm the depositions or to stick to their oaths. Only a witness who had positively affirmed the deposition was liable to a suit of false testimony (*dike pseudomarturion*; *see* Dike, dike (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13081/full)) after the main trial. In the fifth century BCE depositions were oral, while in the fourth century written documents were filed during the preparatory sessions (Anakrisis (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13016/full) or *diaita*; *see* Diaitetai (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13076/full)), but the wording was always the same. In no case could the witness describe relevant facts to the court in his own words. He was also never required to answer questions from members of the court, the presiding magistrate, or the litigants. Testimony from hearsay while the informer was still alive was strongly discouraged (Dem. *or*. 46.7) by the sanction of a future suit of false testimony. In trial, the risk of this suit and the witness's character – often argued in court speeches – were the only bases on which to evaluate a deposition. Outside Athens, in an international case, after the first speeches in court both litigants were allowed to question the witnesses (*IK* 41 *Knidos* 1.221.67–72 = *Syll.*^{3} 953.44–9; ca. 300 BCE). In Athens a suit of false testimony had no influence on the original verdict, but the offended party

could receive payment of a fine that doubled the amount of the damage resulting from the testimony. A witness who had been convicted of false testimony three times lost his civil rights.

Other means of proof were employed outside court. The Athenian panels of hundreds of judges were unable to examine the authenticity of a document, especially in the restricted time limit of the trial. Thus a litigant brought witnesses to confirm it. Alternatively he could challenge his opponent beforehand to concede authenticity. This challenge (*proklesis*) was issued before witnesses, who could then testify also to the opponent's reaction. A challenge was also necessary to question slaves under torture (*basanos*); otherwise slave testimony was not relevant. *Basanos* was a private procedure administered only when the litigant to whom the slave belonged handed him or her over to the opponent, who would then administer the lashes. The opponent was not allowed to examine the slave, but was instead bound strictly by the issue formulated in and accepted with the *proklesis*. Under torture, the slave could only affirm or refute a question worded like a witness deposition: that the slave "knew" about the issue. Even though many challenges were mentioned, in the court speeches not a single slave deposition given under torture is preserved. In court, the speakers regularly brought in witnesses about the fact that the opponents had refused the challenge, to make the point that the opponents had agreed with the issue. Also, oaths sworn out of court to affirm certain facts – the only means for women to testify – or to settle the whole case were only relevant after an agreement resulting from a challenge.

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Rome

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The classical Roman jurists did not care much about the law of evidence. Proof, as a matter of verifying facts, belonged to the free discretion of the courts, the *Iudex* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13124/full) *unus* and the board of *Recuperatores* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13219/full) in private cases, and the juries in criminal panels. Following Greek tradition, the Roman manuals on rhetoric concerned themselves with evidence and persuasion. Modern literature on Roman law has almost completely neglected the topic. The best reference is Kaser and Hackl (1996: 117–20, 361–9, 491–2, 599–607), differentiating between the historical periods of Roman legal procedure; see also Schulz (1951: 23–4).

Over the centuries the list of "non-artistic" proofs (in Aristotle's rhetorical sense) has been enlarged: *tabulae* (documents), *testimonia* (witness depositions; *see Testimonium* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13248/full)), *pacta conventa* (contracts), *quaestiones* (questioning under torture; *see Quaestio* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13215/full)), *leges* (laws; *see Lex, leges* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13172/full)), *senatus consulta* (decrees of the Senate), *res iudicatae* (precedents), *decreta* (decrees of magistrates; *see Decretum* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13066/full)), and *Responsa* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13223/full) (opinions of jurists), all mentioned in Cic. *Orat*. 2.116; *praeiudicia* (precedents), *rumores* (rumors), *tormenta* (statements under torture), *Iusiurandum* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13131/full) (oath), and *testes* (witnesses), mentioned in Quint. *Inst. or*. 5.1.2. Again, laws and the means of proving facts are mingled. From the second category of "proof" only witness depositions and – since courts and procedure have changed – documentary evidence were of legal relevance. Precedents were not binding, but rather had rhetorical impact; while opinions uttered on special cases by the small and exclusive circle of jurists acting in Rome had the force of legal statutes. At least in the preparatory stage *in iure*, before the Praetor (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah20109/full), the plaintiff had to disclose all means of evidence to the defendant (*editio*, Ulp. *Dig*. 2.13.1.3; Kaser and Hackl, 1996: 220, 362).

To provide witness testimony was a duty of friendship and a privilege for free, respectable persons. Under sanction of infamy a witness called to observe certain formal acts was not allowed to refuse testimony about that act (*XII T*. 8.22). In criminal trials depositions drafted in writing were read aloud during the speeches. Witnesses had to swear oaths and after the first speeches were cross-examined by the parties, normally by their advocates, first the plaintiff's witnesses and then the defendant's, each only once. An absent witness could testify through a sealed document (*Testatio* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13247/full)) confirmed in court by witnesses who had been called to the act of the deposition. For false evidence, capital punishment was originally imposed (*XII T*. 8.23), later only a fine and compensation to the party who had lost the case. Bribing a witness was punished as a crime.

Torture was applied to slave witnesses in, above all, criminal cases. Torture in private cases is mentioned only briefly in Pomponius *Dig*. 12.4.15 and Papinian *Dig*. 19.5.8, and in the second case the plaintiff himself had administered the questioning; cf. also Paulus *Dig*. 21.1.58.2. As witnesses,

Roman citizens were questioned under torture only in *crimen maiestatis* (crime against the state), a rule that from the time of Marcus Aurelius was generally extended to the lower classes (*Humiliores* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah22157/full)); the "more honorable" (*Honestiores* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah22149/full)) were exempted (*CJ* 9.41.11). One must distinguish torture as a means of punishment from torture as a form of questioning. The former was imposed first in the provinces on non-citizens, in postclassical criminal law generally on *humiliores*.

Documents over time came to be of some importance in private cases. Since a case could stretch over several hearings, the single judge and the small Roman courts had enough time to examine documents' authenticity by inspecting the unbroken seals and by evaluating the witnesses of the documents. The judges were free to form their own opinions about the trustworthiness of private documents. By several means the praetor could also force an unwilling party to produce certain documents for the trial (*edictum de edendo* on formal contracts, *stipulationes*; *interdictum de tabulis exhibendis* on wills). Forgery was punished as a crime.

With the *cognitio extra ordinem* after Diocletian, the system of evidence essentially changed. The judge, now a state official, was master of the trial. Since he officially had to search for the truth it was no longer the responsibility of the parties, but his responsibility to question the witnesses and to determine which documents were to be produced. To find the facts the judge also questioned the parties. Binding rules on the probative force of documents and witnesses were enacted. Documents became superior to witness testimony. When issued by a professional scribe (*tabellio*; *see* Tabelliones (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13235/full)) they constituted decisive proof if not rebutted by special sidebar trials. This scribal form became mandatory for many contracts. Certain numbers of witnesses (up to five) were stipulated for concluding oral transactions and for proving them in court.

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SEE ALSO: Crimen (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13061/full); Formula (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13103/full); *Gesta* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13106/full); *Instrumentum* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13121/full); Oaths, Greek and Roman (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13190/full); Twelve Tables (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13255/full).

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Harrison, A. R. W. *(1971) The law of Athens, vol.* ***2****, Procedure. Oxford.*

Kaser, M. *and* Hackl, K. *(1996) Das römische Zivilprozessrecht. Munich.*

Schulz, F. *(1951) Classical Roman law. Oxford.*

Thür, G. *(2005) The role of the witness in Athenian law. In* M. Gagarin *and* D. Cohen*, eds., The Cambridge companion to Greek law: 146–69. Cambridge.*
CrossRef (/resolve/reference/XREF?id=10.1017/CCOL0521818400.009)

Thür, G. *(2008) "The principle of fairness in Athenian legal procedure: thoughts on the echinos and enklema." Dike* ***11****: 51–73.*

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Published Online: 26 OCT 2013

DOI: 10.1002/9781444338386.wbeah13234

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Book Title

The Encyclopedia of Ancient History

Additional Information

How to Cite

Thür, G. 2013. Syro-Roman law book. The Encyclopedia of Ancient History.

Publication History

1. Published Online: 26 OCT 2013

- Abstract (/doi/10.1002/9781444338386.wbeah13234/abstract)
- Article
- References (/doi/10.1002/9781444338386.wbeah13234/references)

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Until the edition by Selb and Kaufhold (2002), this source was seen as containing an "enigmatic" mixture of Roman law and non-Roman law, i.e., local customs from the east of the Late Roman Empire (Buckland 1963: 48; Maas 2000: 247–9, with some passages translated into English). Now, scholarly opinion holds that this book collected and explained (for law school teaching in an Eastern province) *Constitutiones* (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13055/full) (statutes) enacted by Roman emperors of the fifth century; only some of the didactic explanations reflect local legal practice and ideas. The – unpreserved – original version was written in Greek at the end of the fifth century. After the Islamic conquest, Christians continued using the law book, but in a Syrian translation written in the sixth century. The Syrian text was translated into Arabic and Armenian, and in the eighteenth century the Armenian one into Georgian; in different versions all these texts are preserved in manuscripts kept now by Orthodox or Uniate Churches of the Christian Orient.

Selb and Kaufhold (2002) published the first critical edition of the Syrian version. In its first volume a survey is given of former scholarly research, as well as of the original number and sequence of paragraphs; they also provide lists of concordances of the differently enumerated paragraphs, and a Syrian-German glossary. The second volume contains the text, critical apparatus, and a translation into German. In the third volume the historical and legal aspects of each paragraph are commented on. (For the history of the edition see Kaufhold 2005.)

In a quite unsystematic way Roman official legislation on private, penal, and public law is collected and, on a very modest juristic level, explained: mainly inheritance; marriage and dowry; paternal authority; slaves; and the procedure connected with these issues. Much research is still to be done, for example, comparing the actual clauses known from contracts preserved in papyri with the fictitious didactic cases. For the influence of the law book on Islamic law see Crone (1987).

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SEE ALSO: Law schools (http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13142/full).

References and Suggested Readings

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Buckland, W. W. *(1963) A text book of Roman law from Augustus to Justinian. 3rd ed. revised by* P. Stein *(digitally printed version 2007). Cambridge.*

Crone, P. *(1987) Roman, provincial and Islamic law. Cambridge.*

Kaufhold, H. *(2005) Die Neuedition des syrischn-römischen Rechtsbuches. In* G. Thür*, ed., Antike Rechtsgeschichte. Einheit und Vielfalt: 67–80. Vienna.*

Maas, M. *(2000) Readings in Late Antiquity. A source book. London.*

Selb, W. *and* Kaufhold, H. *(2002) Das syrisch-römische Rechtsbuch, eingeleitet, herausgegeben, deutsch übersetzt und kommentiert. 3 vols. Vienna.*

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