

Elizabeth A. Meyer: Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice, Cambridge: Cambridge University Press 2004, XVI + 353 S., 9 illus., ISBN 0-521-49701-9, GBP 50,00

Rezensiert von:

Carlos Sánchez-Moreno Ellart

Departamento de Derecho Romano, Universidad de Valencia

Everyone is aware of the different methods used by historians and jurists or, to be strictly accurate, of historians of Rome and Romanists. The Law of Antiquity - and specifically Roman Law - has its own method, conditioned by the interpretation of juridical texts and deeply indebted to the legal value that the Compilation of Justinian has had in the past. Unfortunately, in this sphere historical and social background is often passed over in favour of a purely technical perspective: this method is mainly focused on Roman jurisprudence - the so-called "Roman legal science" - and broadly speaking it consists in deciding whether a particular *actio* is appropriate to a certain case or whether an institution derives from Justinian law and, as a consequence of this, the texts related with it are interpolated by the compilers. [1] Since procedure constitutes the framework of Roman law and the work of jurists is its backbone, no one can raise any objection to this perspective. Indeed, this has practically been the sole interest of Romanists for many years. However, nowadays many Romanists are interested in the historical context of juridical institutions, and furthermore, historians attach increasing importance to law as a valuable document for understanding Roman history. Nevertheless, as is often the case, the most difficult factor is how the two methods may be co-ordinated to useful and creative effect. In this book, Elizabeth A. Meyer, who usually investigates Greek and Roman political history insofar as they are related to law, sets out to present an interdisciplinary study. The subject itself, as well as the perspective from which the author approaches it, is fascinating, complex and unorthodox: the material includes the study of literacy in the Roman World (Bowman, Beard), close to the magic and ritual elements of *tabulae ceratae* and, as an expression of older beliefs, their possible value as "authoritative legal texts", *id est* texts that create, modify or terminate a legally-recognised state of affairs. Moreover, this material is considered taking account of the theory of speech acts, citing a wealth of sources and adopting a very orderly approach. It should be said that one of the virtues of this book is its clarity, for in the introduction itself (1-7) Meyer boldly reveals her aims: to throw a "rope bridge over the chasm between the study of Roman history and the study of Roman law", since the independent evolution of these disciplines has left jurists and historians "inhabiting two practically irreconcilable mental worlds" (3). Following this, she declares that the starting point of her reflection on the use of tablets is the fact that during the Republic some legal acts, the ordering of state, legal

procedure, magic and religion share "an ancient and ceremonial protocol in which writing on *tabulae* played an important part" (4). Meyer calls this protocol the "unitary act, because all of its many parts had to be accomplished" to be effective in the visible or invisible world. This power of unitary acts was, according to Meyer, assumed through history, and with different nuances, by laymen and even by some jurists. The structure of the book conforms to this starting point: part I (9-120) studies the power of *tabulae* - and their different types - in Roman society, particularly in the Republic. In this part the study is synchronic, whereas in part II the study is diachronic and covers the period from the first century to the reign of Justinian.

Part I includes five chapters. In the first ("The use and value of Greek legal documents", 12-20) Meyer deals with the differences between Roman and Greek culture in written documents and, specifically, with respect to wax tablets. In my opinion, this chapter is significant, because literacy is, in a way, quite different in Greece. In fact, studies on literacy (Parry, Havelock) are centred on classical Greek culture and hardly ever concern themselves with the Roman world. In classical Athens, the document is exempt from the complex ritual that is customary in Rome: the only convention that we discover is the presence of witnesses and, on the majority of occasions, the seals. According to widely-held opinion, waxed tablets were not a special medium of proof in Greece and, contrary to the old theory of Mitteis [2], matters were no more different in the Hellenistic Greek world: "the implication of legal documents are, in their form and language, neutral" (16). Chapter two (21-43) analyses Roman perceptions of tablets. Here, in line with Alan Watson (relationship between religious commentaries of *pontifices* and secular commentaries of civil law by jurists), the author highlights some affinities between "religious and legal writing" (38). The cases of Cato the Elder and Varro are quite significant: both provided written examples of prayers, and also of contracts, related to agrarian economy. [3] Citing Paulus (D. 32.92 pr. 13 *resp.*), she suggests that the importance of written documents - and, in particular, wax tablets - continued throughout the Empire (39). Meyer insists on the indistinctly defined limits between public and private, because the majority of documents are technically private, but their consideration was, in a way, public. Chapter three (44-72) reflects on peculiarities in the style (archaic or, at least, archaising) and phrasing of *tabulae*. They are, in fact, written in a formulaic language, and this characteristic is a sign of the close harmony between legalistic form (human level) and magic language (realm of magic). [4] Romans, Meyer points out, refer to these word-acts by the name of *carmina* (71). Chapter four deals with recitation from tablets, and here the author considers the "performative" nature (in the sense of Searle or Austin) of tablets, both significant and active. [5] The author reviews different examples of these procedures, which "must be executed correctly and completely" (73), *id est* prayer (74-77), curse tablets (77-79) and legal procedure (79-86, a very appealing hypothesis about the formulary process). After expounding on the power of recitation as a solemn and authoritative reading, related with a musical component [6], the author offers some representative examples, such as the case of Vitellius (Suet. *Vit.* 15) and the more

significant example of Marcus Aurelius (*Frag. Vat.* 195). Chapter 5 brings part I to a close by exploring "tablets and efficacy" (91-120). In these pages, Meyer develops her theory of "unitary acts", in which ritual involving tablets is especially important. Here, she mentions several examples: the census, the treaties, the laws, the vows and dedications, and finally, the curse-tablets. In the cases of *Senatusconsulta* and account-books (for example *nomina transcripticia*), ritual is apparently not required, and the author considers these as "constitutive acts", since writing on the *tabula* is the most important requirement here (108), and because the connection between writing and the physical object is closer: their validity depended on their having been written. In the section "legal *tabulae*", Meyer deals with the legal documents of individuals, including *mancipatio* and *stipulatio*. *Tabulae* are not usually mentioned by jurists, but "are referred to in passing" (117). [7] Part II ("The evolution of practice", 121-298) focuses on the context of the ceremonial acts that involved tablets: the belief and the tradition that make them possible, in the context of *fides*. Tablets, perhaps not a very useful expedient and, at all events, more expensive than papyrus, are associated with citizens, and this fact is worthy of note in the provinces. In these pages the author seeks to clarify the significance of tablets with respect to geographical and chronological contexts. Chapter 6 deals with "Roman tablets in Italy" and chapter 7 is devoted to tablets in the provinces, principally - as is logical - in Egypt. Italian examples from Pompeii and Herculaneum lead the author to consider the question - dealt with Camodeca in a different way [8] - of the change from diptych to triptych and documents mainly related with formulary procedure (cases of *vadimonia*, *interrogationes in iure*, et cetera). Meyer insists on the most conservative evolution to triptych in the case of *testationes* "associated with the old unitary acts" as a sign of the "special relationship between unitary acts and tablets" (153). This chapter concludes with a study of the *Senatusconsultum Neronianum* of AD 61 (163-168). As far as the provinces are concerned, following a discussion of the double-document, the author underlines the complexity of Roman influences on territories with different documentary habits. Reasons for changing practice in the provinces are very complex: there are many factors to evaluate, different levels of adaptation, hybrid types, Roman policy, factors which vary in each province ... There are a wealth of suggestions in the last two chapters, which are, to a certain extent, related: chapter 8 deals with tablets and other documents in court up to AD 400 (216-249), and chapter 9 (250-293) discusses the relationship of documents with the jurist, the law and the emperor. Taking the case of the power of prestige in Roman courts, I consider the examples of Cicero provided by the author to be of significance: *tabulae* which have their origins in a ritual are an authoritative medium of proof and, as Meyer suggests, were imagined as "animated proxies for their authors" (220). The paradox is that the emperor, in this context, was able to modify these assumptions through his authority. By way of example, Meyer cites Libo's trial (*Tac. Ann.* 2.27-31). When Meyer writes of "the absence of system" (250), she alludes to the lack of a clear system of proof in the high Empire. By virtue of this absence of system, unitary ceremony acts "imposed a strong element of continuity", but in the fourth century, and particularly during the reign of Constantinus, matters changed: the

emperor, now clearly the main source of law, incorporates the old ritual on some occasions, but not on others. An example of note is the case of *stipulatio*: the spirit of the institution is preserved, but many formal requirements are made more tolerable (254-264).

With the exception of some details that might be discussed, this book makes an important contribution to an interdisciplinary study. What distinguishes this work from others on similar subjects is the breadth of its scope. The focus of this study might cover a shorter period or take another angle, id est a specific kind of document and a specific problem such as posting, use in procedure, etc. However, the author underlines the importance of tablets in the Roman world and relates tablets with ritual and, as a consequence, explores every problem, both juridical and historical, over a long period of time (from archaic Rome to the Justinian era) and over a large area (examples from the entire Empire). Through this perspective, we are able to appreciate other facets of certain questions. Incidentally, Meyer refers to Hägerström in her conclusion: it is significant that Romanists have not been very understanding with respect to the theories of this exponent of "Scandinavian Realism" as it is known; Hägerström applied an arguably simplistic methodology to assess elements of magic in Roman law which, in many cases, were worthy of further study. [9] Obviously, as the author points out, jurists were working in a context of beliefs, but this assumption is difficult to demonstrate, because juridical texts set out these factual questions. Anyhow, in conclusion, I believe that Elizabeth Meyer has succeeded in interrelating very different aspects of Roman documentation, situating them in a framework in which laws are explained as part of a social context. This context - essential for us Romanists - is extremely difficult to understand if one starts from the pure categories of jurisprudence, which has tended to be the most frequent approach.

Notes:

[1] With respect to this method Max Kaser: *Das römische Privatrecht*, 2. ed. München 1971, 2-12.

[2] Cf. Ludwig Mitteis: *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*, Leipzig 1891, 469-472, about IG 7.3172A, i.e. Nikareta's contract. This author believed in the possibility of dating dispositive documents in Ptolemaic Egypt. Even today it is possible to find this old theory among Romanists.

[3] Cato, *Agr.* 144; 149; 150. Varro, *R.* 2.2.5-6; 2.3.5; 2.4.5; etc.

[4] In this respect, I consider the example argued by the author, i.e. *Apul. Met.*, 2.24.5-7, to be quite significant.

[5] The author follows the line taken by John Langshaw Austin and John Rogers Searle. The notion of "speech acts" includes "performative utterance" as speech acts performing the action that the sentence

describes John Langshaw Austin: *How to Do Things With Words*, Oxford 1962 and John Rogers Searle: *Speech Acts. An Essay in the Philosophy of Language*, Cambridge 1970. Meyer (73, n. 2) explains her relationship with such thought, and points out its applications to Ancient Word and legal language. As Karl-Otto Apel observes (*Die Logosauszeichnung der menschlichen Sprache. Die philosophische Tragweite der Sprechakttheorie*, in: Hans-Georg Bosshardt (Ed.): *Perspektiven auf Sprache*, Berlin 1986, 35-87) Austin does not limit performative acts to social institutions: language also works as a metainstitution.

[6] Meyer refers to the studies of Maurice Bloch.

[7] The author quotes D. 45.2.11.1-2; D. 2.4.1.57; D. 45.1.126.2; D. 45.1.134 and D. 45.1.139.3.

[8] Vide especially Giuseppe Camodeca: *Nuovi dati sulla struttura e funzione documentale delle tabulae ceratae nella prassi campana*, in: Heikki Solin / Olli Salomies / Uta-Maria Liertz (Ed.): *Acta colloquii epigraphici Latini*. Helsingiae 1991, Helsinki 1995, 59-77.

[9] Axel Hägerström: *Der römische Obligationsbegriff im Lichte der allgemeinen römischen Rechtsanschauung*. Vol. 1, Uppsala / Leipzig 1927, vide the lucid, unfavourable but, in a way, unhappy review by Wolfgang Kunkel, in: *ZRG RA* 49 (1929), 479-490.

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