

Lyons, D. and Raaflaub, K. (eds.), *Ex Oriente Lex: Near Eastern Influences on Ancient Greek & Roman Law* (by Raymond Westbrook). Baltimore, Maryland: Johns Hopkins University Press. 2015. ISBN-10: 1421414678, ISBN-13: 978-1421414676. 288 pages including preface, bibliography and index. £38.50.

It is difficult to do justice to this rich and thought-provoking collection of the work of Raymond Westbrook in the space permitted for a book review. Since this work has already been reviewed, from the perspective of Ancient Greek law, elsewhere (e.g. by Lesley Dodd: <http://bmcr.brynmawr.edu/2015/2015-09-39.html>) and has attracted praise by such greats as Professors Gerhard Thür and Gregory Nagy (cf. the reviews on the amazon.co.uk page), I will focus my comments largely on the chapters devoted to aspects of Roman law.

Raymond Westbrook had a complex relationship with Roman law and with those who devoted themselves to the study of it. As Deborah Lyons points out in the preface, scholars of Roman law were not always so receptive to his ideas concerning the possible Near Eastern influences upon early Roman law. And yet, despite the initial hostile reception, many of his articles on the subject subsequently became required reading for honours seminars and made their way onto numerous reading lists and into countless footnotes. The reasons for the enduring popularity of these pieces are not difficult to fathom. These many-layered articles with their complex reasoning and mastery of different “law codes” of the Ancient Near East provided a welcome antithesis to the standard literature and, in my experience, provoked by far the most fruitful discussions from undergraduates.

And yet, Raymond Westbrook’s work always remained at the periphery of mainstream Roman-law studies. The reasons for this are, in my view, twofold. The first relates to the nature of Westbrook’s endeavour. As a scholar of the Near East, and indeed a very prominent and well-respected one, Raymond Westbrook always approached Roman law through the lens of the “law codes” of the Near East. This made him almost unique as a scholar working on aspects of Roman law. For, while the study of Roman in conjunction with Greek law continues to be practiced by a handful of scholars, virtually no one of his generation continued the study of Roman law in conjunction with the laws of the Near East. The reasons for this are complex and relate to the increasing insularity of the Roman-law discourse during the course of the twentieth century. The effect of this was not only a decline in the knowledge of ancient Greek law among Romanists, but a virtual disappearance of any comparative knowledge of “law codes” of the Near East. This made Westbrook, by definition, the “outsider” when it came to the study of Roman law. The second reason why Westbrook’s work remained at the periphery relates to *a priori* claims upon which much of his scholarship is based. In essence, Westbrook focused on the “history of ideas”. His central hypothesis, beautifully and lucidly set out in chapter 12 of this collection, is that the legal culture of the Near East influenced early Roman law on the plain of ideas. He did not seem to be interested in demonstrating a direct transmission from the Near East to Early Rome. For him, it was sufficient to demonstrate similarities in thought and action

among various “law codes”. This brought him into direct conflict with the mainstream Roman-law community that, trained as lawyers, were used to dealing with more direct and immediate forms of historical causation (e.g. between Greek philosophy and Roman law).

As mentioned at the start of this review, I will limit my observations to the chapters concerned with Roman law (chapters 5 – 9). To get a sense of his main thesis, the reader would be well advised first to read chapter 12 (The Early History of Law: a Theoretical Essay) as well as chapter 10 (Codification and Canonization). These two chapters collectively set out the main thrust of his scholarship. Two points raised in these chapters deserve specific mention. The first (found in chapter 12) is a rather stunning account of how the history of early law continues to be based on undercurrents of ideas that first surfaced in Enlightenment scholarship of the seventeenth- and eighteenth centuries. This chapter is worth reading together with the introduction by Sophie Démare-Lafont and her insights regarding “mental maps” in these “law codes”. The second important point (raised in chapter 10) concerns the nature of “law codes” in the Near East. A central part of Westbrook’s thesis remains that these were not originally drafted as codes of law in the sense in which the term is used in modern legal literature. Rather, these “codes of law” were closer to “scientific legal treatises” that “described the law”.

This brings us then to the chapters devoted specifically to Roman law. Chapter 5 (The Nature and Origins of the Twelve Tables) is a bold shot across the bow of the majority views concerning the origins of this enigmatic legal text. Instead of revisiting the classic narrative told by Livy concerning the embassy to Greece, Westbrook instead argues that both the form (i.e. the nature of the rules and their logical arrangement) and content (specifically inclusion and exclusion of rules) were influenced by legal thought from the Near East. This chapter should ideally be read in conjunction with chapter 4 (Barbarians at the Gates: Near Eastern Laws in Ancient Greece), a previously unpublished piece that goes a long way to informing the narrative of Livy regarding the embassy to Greece. Although Westbrook’s account of the form and content of the Twelve Tables was initially met with scepticism, it has become quite influential and recent reconstructions such as those by Crawford and comprehensive discussions of the laws such as those by Humbert continue to engage with it.

Chapters 6 and 8 should be read together as both tackle questions of “power” loosely described. The first is devoted to the question of restrictions on the alienation of property in early Roman law and deals with the enigmatic concepts of *nexum* and *mancipium*. While much ink has been spilt over these two terms and their meanings in early Roman law, Westbrook argues that parallels with the laws of the Near East provide new insights. A similar argument is raised in chapter 6 where the right of the *paterfamilias* of life and death over his *familia* is discussed. Westbrook argues that this “right” has its origins in Near Eastern legal culture. The power and longevity of Westbrook’s ideas in these areas of early Roman law is again visible in more recent works on the topic. Both Cornell and Forsythe devote much time to exploring Westbrook’s ideas and situating them in the literature.

The final chapter devoted to Roman law, Chapter 9 (The Origin of *Laesio Enormis*) tackles the knotty issue regarding the origins of the principle of lesion beyond moiety. It engages sensitively with the vast swathes of literature on the topic and argues that the idea of lesion was prevalent also in Near Eastern legal culture. Although contemporary scholarship on this topic has yet to fully engage with this view (see e.g. Sirks), scholars interested in the subsequent history of this legal institution have begun to search outside the Roman legal tradition for its justification (e.g. Gordley). A slight criticism may be raised here against Westbrook's views on Roman law as the Law of the Empire post 212 CE. More recent studies have argued for a more nuanced, pluralist application of Roman law in the Roman Empire during the second and third centuries CE (but also before) (e.g. Humfress).

Westbrook had a very lucid style of writing with a great sense of wit. To give but one example, the reader is informed: "a law code has two requisites: firstly that it be a law and secondly that it be a code." (p. 181). Despite this seemingly dry observation, the remainder of chapter 10 is brimming with insight and contains a very complex argument about changes in the understanding of Near Eastern "law codes" following the advent of Greek intellectual influences. This change became one of his stock themes, often repeated throughout many of his works.

It is difficult to adequately summarise the intellectual legacy of a scholar with such a rich and varied output. Certainly in the field of Roman law, the longevity of Westbrook's ideas suggests that, despite an initially frosty reception, these have been largely embraced. But the influence of Westbrook stretches far beyond Roman law. In chapter 12 Westbrook makes the following observation:

"At the beginning of the twenty-first century we have reached a point where we can reject the model of early law based on an intellectual tradition going back to eighteenth-century philosophy. Instead we need to create a new paradigm based on the mass of evidence that has accumulated over the last 150 years." (p. 226)

These are prophetic words. As the study of Roman law increasingly finds new homes outside the Law School, so the study of ancient law will flourish (e.g. the Ancient Law in Context Research Network hosted in the University of Edinburgh). One could end this review with a reference to the famous statement in the New Testament concerning a prophet and his own country (Mark 6:4), but I will refrain from doing so. Rather, I wish to predict that future academics will look back upon the work of Raymond Westbrook as having blazed a trail for ancient law. Time will tell.

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