Writing the law in early Greece?


I

Michael Gagarin is one of the leading contemporary American scholars in Greek legal history, a status confirmed by his rôle as joint-organiser (together with a brace of unrelated Cohens, David and Ed) of the most recent *Symposion* conference, held in California in 1990 (the first time this major international conference has been held in an English-speaking country); and as sole editor of the conference proceedings (*Symposion 1990, Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Cologne & Vienna, 1992). Gagarin’s previous books have covered both literary topics (*Aeschylean drama*, Berkeley & Los Angeles, 1976) and epigraphical texts (*Drakon and early Athenian homicide law*, New Haven, 1981). His interests therefore have focused on early Greece, but have by no means been geographically restricted to Athenian material: witness the series of papers in which he reinterprets the function and coherence of the so-called law code preserved on an extended fifth-century inscription from the Cretan city of Gortyn.

In *Early Greek law* (which arrived on my desk in 1988, and I owe profound apologies both to the author and to readers of *Polis* for the delay in submitting this review), Gagarin not only continues but also develops his earlier work. Much of the ancient material he has of course previously discussed. What is new here, and what makes for an impressive book, is the deployment of a wide range of intellectual disciplines (legal anthropology, for instance, with extended and apposite quotations
from Bohannan at p.31 n.36 and at p.41 n.62; and legal theory, with arguments of Hart and of Salmond discussed on p.2 and p.72 respectively); and the advancement of sweeping and original theories, most notably about the invention and development of writing and the invention and development of law.

It is perhaps predictable that a book of such scope has received mixed responses from other scholars. (One of the incidental advantages, of course, of failing to complete your book reviews at the proper time is that such delay enables you to see other people's reactions before committing yourself, although this should not be taken to excuse or to justify the practice). Some of the criticisms that have been brought against Early Greek law seem to me to be rather unfair, most notably those of Ruschenbusch (CPh 84, 1989, 342–345), which boil down to an attack on any form of interdisciplinary study, or indeed on any attempt to make a subject accessible. Ruschenbusch closes his review by complaining that what he terms Greek law is, as a branch of law, a specialist discipline which should be studied only by expert jurists: Gagarin, in Ruschenbusch's view, is debarred from undertaking this enterprise by the simple fact that out of the 168 authors cited in his bibliography, only 15 (again in Ruschenbusch's view) are themselves specialists; it is an interesting exercise in speculation, incidentally, to try to identify which 15, a number that can only be reached by means of some fairly arbitrary exclusions.

Other reviewers have advanced criticisms from a very different perspective. Wallace & Westbrook (AJPh 110, 1989, 362–367) for instance, writing unlike Ruschenbusch from within a common-law framework (cf. their emphasis on judge-made precedents as a source of law, p.366), complain not that Gagarin is using but that he is misusing the perspectives which he derives from philosophers of law such as Hart (used by Gagarin as a starting-point, p.2). This is a criticism on which I do not feel competent to arbitrate, not least because the question, 'what is