liturgiam praecipue pertinent, testimonia quae aliter atque aliter in memoriam redacta sunt. Non si tratta di un'edizione critica, ma il lettore è grato agli autori per aver raccolto insieme molti testi le edizioni originali dei quali sono praticamente irreperibili.

Nel vol. II.1 è stata inclusa anche una noterella epigrafica (pp. 179–85), nella quale l'autore constata la mancanza di un vero *corpus* epigrafico della Sicilia paleocristiana. In attesa di un'impresa del genere, mi sia permesso di segnalare il volume *Le iscrizioni del Museo Civico di Catania. Storia delle collezioni – cultura epigrafica – edizione,* di chi scrive (Helsinki 2004), con una testimonianza riguardante il culto di S. Ilarione, anteriormente non riconosciuta come tale (nr. 189), e la più antica iscrizione cristiana datata della Sicilia finora conosciuta (nr. 164, dell'anno 341).

In un'opera complessivamente così ricca sorprende la mancanza di indici analitici. C'è, però, una bibliografia di grande utilità, a cura di Rosaria Cicatello, che occupa le ultime 100 pagine del primo volume.

Kalle Korhonen

ERNEST METZGER: *Litigation in Roman Law*. Oxford University Press, Oxford 2005. ISBN 0-19-829855-2. XI, 213 pp. GBP 50.

In this book, Ernest Metzger seeks to revise a too "regular and orderly picture of litigation before the magistrate". In a short introductory chapter (1–6) he explains that the Roman jurists' writings fail to give a living and historically valid picture of classical legal procedure; they are given to abstraction, are generally shy of procedure, and were manipulated by the Digest compilers under Justinian. The discovery of the Institutes of Gaius, however, at the beginning of the 19th century, and that of the municipal charter of Irni at the end of the 20th, have shed important new light on procedural rules, in addition to which litigation documents found in the Vesuvian area have provided much-needed evidence for legal practice. The sixteenth-century legal humanists who wrote on the legal process did not yet have the benefit of this evidence, and the great strength of the book is a clear understanding of how it has subsequently changed the picture of litigation in Roman law, especially the role played in it by postponements.

The main argument of the book is that although the picture has been considerably revised, even contemporary accounts of procedure reiterate out-dated, and even invented, ideas about Roman litigation. The principal one of these is that the old civil law summonses (*in ius vocatio*) were replaced with voluntary contracts for appearance on a fixed date (*vadimonium*) as the means to initiate litigation in the magistrate's tribunal (*in iure*); this allowed both parties to arrive before the magistrate well-prepared, so there would have been little need for postponements before the joinder of issue (*litis contestatio*) and assignment of the case to a private judge (*apud iudicem*). Although the evidence still remains scanty and often very difficult to interpret, Metzger builds a coherent case for arguing that 1) the voluntary *vadimonium* to introduce lawsuits never emerged as a regular praetorian institution to replace *in ius vocatio*; 2) postponements were normal *in iure* before the *litis contestatio* when negotiation and preparation of the case took place; and 3) postponements did not require a personal audience with the magistrate.

The second chapter on "Bail" (7–17) provides a discussion of various forms of *vadimonia* and the relevant doctrinal developments. The so-called "judicial" *vadimonia* were

made under magisterial compulsion and used either to postpone hearings to a later date in the same local court (*Vertagungsvadimonium*) or to transfer hearings to a competent remote court (*Verweisungsvadimonium*), for example, from a municipal to a praetor's or governor's court. The legal humanists, however, devised by analogy another form of contract for appearance (*Ladungvadimonium*) the praetor provided in his edict. This *vadimonium* would have worked as a courteous alternative to initiating litigation with a rough and ready civil law summons by *in ius vocatio* that required the defendant to follow the plaintiff at once to the tribunal. When the discovery of Gaius' Institutes made it clear that the only alternative the praetor's edict provided for *in ius vocatio* was the sending of a representative (*vindex*), the institution was reinvented as a voluntary "extra-judicial" *vadimonium* which the praetor chose to maintain in practice.

The third chapter is devoted to "Bail in Cicero" (19–44). The evidence for extra-judicial *vadimonium* was found especially in Cicero's speeches that, moreover, showed no clear instances of *in ius vocatio*. Thus it seemed that, by the time of Cicero, voluntary *vadimonium* had entirely replaced *in ius vocatio*. Metzger correctly holds that the *argumentum ex silentio* does not prove that extra-judicial *vadimonia* were used to introduce lawsuits but positive evidence is called for. In close examination, *in Verrem* 2.5.34 indeed appears to be a judicial *vadimonium*, and *pro Tullio* 20, although voluntary, a representative example, at best, of collusive lawsuits. An extensive discussion of *pro Quinctio* suggests that the *vadimonia,* taking place before and after Naevius secured *missio in possessionem* of Quinctius' goods, would have been judicial.

In the fourth chapter, Metzger turns to "Bail in Herculaneum and Puteoli" (45–64). When found in the 1930's, the first century wax-tablets from Herculaneum were naturally interpreted as extra-judicial, like the many *vadimonia* in documents relating to banking activities of the *Sulpicii* in Puteoli that came to light in 1959 near Pompeii. According to Metzger, practically all *vadimonia* in the tablets are in fact judicial, and the passive construction of the relevant edict by Gaius accommodates the fact that it may be the party or his representative who promises to appear but "conceals the fact that the magistrate is ordering the *plaintiff* to do something". The wording of the stipulations has been interpreted to show an initiative taken by the plaintiff; but given that the tablets are merely 'declatory' "there is no point in reconstructing the tablets' meaning so as to restore the constitutive effect of the stipulation/promise". The fact that appearances are promised near – not at – the tribunal does not prove that *vadimonium* was extra-judicial because this way the parties avoided the problem of not finding the magistrate where he was supposed to be holding court; it shows, however, that *vadimonium* could not have replaced, but worked in tandem with, the *in ius vocatio* still needed to take the defendant to court.

The argument that *vadimonia*, if they are judicial, ought to mention the magistrate's decision (*decretum*) is refuted in the fifth chapter: "How Cases are Postponed" (65–94). "If the documents are records of judicial vadimonia", Metzger suggests, "they could serve as evidence that the parties performed as they were ordered to perform." While it was the magistrate under whose order the parties promised to appear, the latter decided themselves whether to include a penalty. This, according to Metzger, explains why the promise of appearance (what the magistrate ordered) and the promise of penalty (what the parties agreed) are stated in the tablets in separate sentences. The defendant had an interest in proving his compliance (refusal was seriously punished) and in proving the penalty he had promised for non-appearance (otherwise he was liable for *quanti ea res erit*). The plaintiff might need to demonstrate that the penalty

he demanded does not exceed statutory limits (100,000 sesterces) and was not vexatious (for more than one-half).

The sixth chapter deals with "Returning After a Postponement" (95–135). In addition to the penalty, the decision on a day for reappearance rested with the parties; only in default of agreement did the magistrate fix the "day-after-the-next" (*intertium*). As long as the parties were not ready either for a private settlement or a *litis contestatio*, a cycle of reappearances ensued *in iure* (postponements could also be needed to ensure that the judge is present in the magistrate's court when the *litis contestatio* took place, and to fix a date when he is ready to judge). Indeed, Metzger suggests that the magistrate in charge of jurisdiction was not only under obligation to publish the "day-after-the-next", or the next day when a trial and a *litis contestatio* could take place according to the ritual calendar, but also ordered without scrutiny a reappearance on that day for all cases pending at the end of the sitting.

Chapter seven (137–154) sets out to explain the little-known act of "Giving Notice of the Postponement". A fragment of Ulpian preserved in an Antinoopolis papyrus (*P.Ant.* 22) reveals how such a notice could influence the outcome: if the defendant had been notified well in advance of the day when proceedings *in iure* resumed, if he passed over the opportunity to appear before the magistrate on that day, he was denied a *restitutio in integrum*. Metzger argues that the tablets of the *Sulpicii* archive indeed contain two documents produced to prove the giving of notice of the postponement (*TPSulp* 32 and 33). The notice was of importance especially when the promise was made on behalf of the principal defendant by his representative; this would indeed have been the normal case whenever the defendant preferred not to follow *in ius vocatio* to the tribunal at once but sent a *vindex* or *cognitor* instead.

The eighth chapter (155–173) explores "Three Cases" of 1) Petronia Iusta; 2) Quinctius and Naevius; 3) Horace's satire 1.9. These cases, discussed in light of the main findings of the book, pave the way for "Concluding Remarks on Roman Litigation" in ninth chapter (175–178). Scholars have imagined that litigation was conducted in too orderly a fashion, beginning with a voluntary contract that sent well-prepared adversaries before the ready magistrate who assigned the case to a private judge. With the new evidence on the *vadimonium* (the inscriptions and papyri are usefully listed and described in an appendix: 179–192) it seems clear that cases "sometimes" began before the parties were ready with their actions, and in order to negotiate and prepare their cases, they might have to return again and again to the magistrate's court. It appears that, with the postponements, the procedure was organised to accommodate all that coming and going, wheeling and dealing, into the magistrate's tribunal, not to keep it away from there. In all, Metzger's book is an example of a meticulous and challenging reading of ancient sources integrated with modern research tradition, and it should be of great interest to both specialists and students of Roman legal procedure.

Janne Pölönen