

Review

Gergely Deli*

Corpus und Universitas. Römisches Körperschafts- und Gesellschaftsrecht: zwischen griechischer Philosophie und römischer Politik. By Andreas Groten. Tübingen: Mohr Siebeck. 2015. xv + 477 pp. ISBN 978-3-16-153316-7.

Andreas Groten's aim is to enhance our understanding of the legal nature of corporations and associations in Roman law. He tackles the somewhat obscure relation between associations as organized unities and the plurality of their individual members. His research basically revolves around a fragment from Justinian's Digest, originally a text of Gaius from the third book of his commentaries on the provincial edict, which is the single surviving direct reference to corporations as real unities. Two heavily contested terms contained in this text give the book its title: *corpus* and *universitas*. They also constitute the basis of Groten's attempt to prove the existence of a theory of association in classical Roman law. According to Gaius these associations may have a body (*corpus*) and thus "materialize" the interest of the unity (*universitas*) of their members. The question emerges how the ability of having a body relates to the unity of the members and what legal considerations may lay behind this relation.

The author divides his explorations into seven straightforward and nicely traceable sections. After having described the current state of the doctrine he delineates the development of the notion *universitas*. He concludes that this "term of unity" has been used in a technical manner to denote collective entities (like the Roman people — *populus Romanus* — and municipalities, for instance) exclusively within the domain of public law. In the second sections he demonstrates that the concept of associations

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as bodily entities corresponds with the Stoic physical doctrine of the body. The association as a unified “body” comprised of its members holds rights and duties. However, this assumption came under heavy attack from its academic-skeptic philosophical opponents and transformed into a representational concept in the classical period. In section three Groten discusses the political regulatory framework by describing the relevant legal sources (statutes, senatorial resolutions, and imperial enactments) regulating associations in order to establish a sound basis for the analysis of the development of the associations in a conflict between theoretical concepts and the political framework described in section four. This evolution went, so he argues in section five, from a more corporeal concept in the late Republic, through a moderate non-corporeal notion in the classical period, across a transformation into a *ius corporis* in the postclassical era, towards a reclassification during the codification. Justinian’s most important innovation was the reconceptualization of the term *universitas* as a generic term for all public and private associations with the same general rules. In section six, Groten turns to the scarce epigraphic material to reconstruct a plausible systematic and most ancient concept of private associations by analogy to their public counterparts. In the concluding chapter he sums up the chronological development of ancient Roman associations.

A paradoxical feature of this book is that it can be praised for the very same reasons for which it can be criticized. It can be praised for its very brave attempt to discuss the influence of philosophical doctrines on the development of a Roman legal institution. Surprisingly, it is a quite neglected area of research due to many the methodological difficulties associated with such an exploration on the one hand, and to the scarcity and quality of reliable primary sources on the other. With regard to textual transmission the first, though smaller problem is the late, postclassical transmission. The second, more crucial challenge is to fill the gap existing between the late Republic and the Principate after around AD 100, because from this so crucial period only a few sources survive. Those who are rather skeptical in the face of large overarching conceptual descriptions, and who see any arguments for continuities and direct influences of Greek philosophy on the development of Roman law doubtful, may find Groten’s book less convincing. Others, who are enthused by an extremely difficult and therefore fragile historical jigsaw puzzle, might find his devoted and skilled labor an extraordinary achievement. Into this latter category falls the jury of the tenth *Premio romanistico internazionale Gérard Boulvert* which awarded the

book first prize in 2016.

In the following I will try to explain the nature of possible difficulties emerging in the analysis of philosophical influences in Roman law. My example is the notion “convenire” from a text of Ulpian in the Digest. Groten does not consider this fragment in his analysis of the philosophical background of the legal concepts of corporations, though he does touch upon this fragment when he decodes the second *C* in the permission formula of the *lex Iulia de collegiis* as an abbreviation for “convenire.”¹ The text reads:

D.2.14.1.3 (Ulpian 4 *ad edictum*). Conventionis verbum generale est ad omnia pertinens, de quibus negotii contrahendi transigendique causa consentiunt qui inter se agunt: nam sicuti convenire dicuntur qui ex diversis locis in unum locum colliguntur et veniunt, ita et qui ex diversis animi motibus in unum consentiunt, id est in unam sententiam decurrunt.

The word *conventio* is a comprehensive term applying to all matters about which persons who have dealings with one another agree by way of forming a contract or settling a dispute: for just as men are said *convenire* (to come together) when they are brought together and come from different places to one place, so too, when men, starting from different inclinations of the mind, make some common agreement, in other words, have come to arrive at one resolution.²

Groten uses this text to buttress his hypothesis on the three mysterious and heavily debated *C*s in the permission formula for the foundation of associations, according to which the senate might have given those entities approval for gathering [(*C*)*oire*], formally assembling [(*C*)*onvenire*], and collecting [(*C*)*onferre*] contributions. For him, the above text helps to demonstrate that the legal meaning of *conventio* differs from its more general everyday usage (i.e. “coming together”), and metaphorically denotes the result of the meeting, the agreement itself. Thus, later he concludes *convenire* should mean “to assemble in a formal manner in a public space.”³ To come to this conclusion he has to analyse texts spanning over a quarter of a millennium, from

¹ Pages 280–84.

² *The Digest of Justinian*, 1, trans. C. H. Monro (Cambridge 1904), 108 (with small alterations).

³ Page 284.

Cicero's apology for Aulus Cluentius Habitus (66 BC),⁴ through Livy's anecdote on the bacchanal affair⁵ (ca. 20–15 BC) and much later the *lex collegii salutaris Dianae et Antinoi* (AD 136) till our fragment of Ulpian (around AD 211–217) cited above. One might doubt the credibility of arguments relying on such diverse and sporadic textual evidence, but this is only what we have. The sparsity of traces is never a legitimate argument for spreading out our arms helplessly and leaving our job as legal historians half done. It is better to acknowledge this methodological difficulty by doing deeper and more careful research and being cautious in drawing conclusions. In my view, Groten fulfils these two tenets of a Roman legal scholar.

Notwithstanding this general judgment, I would like to suggest that the word *convenire* may have a semantic background which is a slightly different from the view elaborated in his book. It is quite clear that Ulpian makes an analogy between the bodily process of coming together on the one hand, and the non-bodily, purely mental process of the meeting of minds on the other. Ulpian needs this analogy to ensure that the agreement as a cause may have an effect, namely the formation of a contract. It is so because, according to Stoic doctrine, only bodies can have effects, and therefore Ulpian had to relate the mental process of agreeing to its bodily counterpart of physical gathering. Thus, “*conventio*” might not primarily mean the formal act of assembling as in Groten's view, but rather link the mental and bodily phenomena together in order to enable generating legal effects. Only in the second step it might have the meaning attributed to it by the author.

We can see from this small example that the task is even more burdensome than we might have thought. Philosophical influences might emerge at different levels of legal doctrine and practice, and might have not only helped to create overarching theories (such as the one on legal entities reconstructed by Groten in an exemplary manner) but also formed the mostly silent network of preconditions in which any legal act and institution (however small) had to operate. If Groten's enlightening work is later coupled with such detailed exegesis, focusing more on the individual fragments rather than utilizing the entire corpus of often randomly surviving texts from different genres and epochs, it might deliver unhopd for empirical evidence for such over-

⁴ Cic. *Clu.* 57.157.

⁵ Livy 39.14.

arching theories as Groten's.

To sum up, Groten's research is a valuable contribution casting some doubt on the assumption of the mainstream legal scholarship according to which it is highly problematic to accredit an important role to Greek philosophy in the development of Roman legal concepts. His book is clearly written and the primary and secondary sources utilized in his reasoning are well documented, so that it is optimally placed to become the next work of reference in the possibly never-ending search for truth on the relation between Greek philosophy and Roman law.
