

THE ESSENTIALS OF GREEK AND ROMAN LAW



RUSS VERSTEEG

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PREFACE

Countless books detail the development of Roman law and explain the laws of the ancient Romans. Similarly, many scholars have traced the law of ancient Athens. I wrote *THE ESSENTIALS OF GREEK AND ROMAN LAW* with students and educated lay readers in mind. The chapters dealing with ancient Greece focus primarily on the law of ancient Athens in the 5th and 4th centuries B.C.E. But material relating to other Greek colonies and city states also plays a significant role in the development of ancient Greek law. The Roman law chapters explore both law and legal institutions and emphasize the growth and expansion of legal principles. Roman law still serves as the foundation for the civil laws of many nations today. And given the importance of globalization, Roman law is likely to continue to influence the modern world for the foreseeable future.

Each unit begins with a “Background and Beginnings” chapter that establishes the historical context in which law developed and introduces relevant principles of jurisprudence (*i.e.*, legal philosophy). The second chapter in each unit covers procedural aspects of the law, such as court structure, judges, trial procedure, evidence, and legislation. The remaining chapters examine substantive legal topics such as property, contracts, family law, criminal law, and the like. The text also maintains a focus on the connections and influences of social, cultural, economic, philosophical, and political forces as they have affected law and its development.

In addition, I have included several sections that are intended to add another dimension. These sections, entitled “Law in Literature,” use works of ancient literature to explore aspects of law as seen through the eyes of poets, dramatists, orators, and historians. In theory, modern readers can learn a great deal about law through literature because literature often lacks the “official filter” of many traditional legal sources. Of course each individual author brings his own biases about law and the legal system to his writing. But as long as we acknowledge the potential for such bias, these sections can offer completely different perspectives and insights.

Several years ago I wrote *LAW IN THE ANCIENT WORLD*. That book surveyed law in ancient Mesopotamia, Egypt, Greece and Rome. I used the chapters on Greek and Roman law in that book as a starting point for writing *THE ESSENTIALS OF GREEK AND ROMAN LAW*. But I significantly rewrote, restructured, and/or revised virtually everything.

I would like to thank my daughter, Whitney Barclay VerSteeg, who read and provided useful criticism on the manuscript. Thanks also to Dean John O'Brien and the Board of Trustees of New England Law Boston who supported my work with an Honorable James R. Lawton Summer Stipend during the summer of 2008.

Russ VerSteeg
August 2009

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The Essentials of Greek and Roman Law

CHAPTER 1

BACKGROUND AND BEGINNINGS OF ATHENIAN LAW

§ 1.01 Introduction

Scholars who specialize in ancient Greek law often observe that Greek law has failed to significantly influence the law of later societies. They have, in short, apologized for Greek law; concluding that “ancient Greek law has had a negligible influence on posterity.”¹ Nevertheless, as MacDowell remarks in his influential book, *The Law In Classical Athens*, “[T]he attempt to understand the subject is worth making. Law is the formal expression of a people’s beliefs about right and wrong conduct, and no people in the world has had more interesting and original beliefs about conduct than the ancient Greeks.”² Besides, the Romans, who are world-famous for their influence on subsequent legal development, read and studied Greek philosophers who wrote about law. Thus, the ancient Greeks had a profound effect on legal progress and evolution, albeit in an indirect manner.

Much of what we know about the particulars of ancient Athenian law itself comes from over one hundred forensic speeches of the late 5th and early 4th centuries B.C. These speeches were written with the intention that they would be presented orally in court. In terms of our understanding of legal philosophy, we can turn to the abstract discussions of law in the writings of Greek philosophers. Especially relevant are Plato (*Laws*, *Republic*), Aristotle (*Nicomachean Ethics*), and Theophrastus, Aristotle’s pupil, (*Laws*). But before we turn our attention to the laws of Classical Athens during its Golden Age in the 5th and 4th Centuries B.C., we shall first examine its antecedents in the 8th through 6th centuries B.C.

1. S.C. TODD, *THE SHAPE OF ATHENIAN LAW* 4 (1993) [hereinafter “TODD, SHAPE”]. See also *Id.* at 3 (“Law is one of the very few areas of social practice in which the ancient Greeks have had no significant influence on subsequent Societies”).

2. DOUGLAS MACDOWELL, *THE LAW IN CLASSICAL ATHENS* 8 (1977).

§ 1.02 The Earliest Greek Law

Our earliest evidence for law in ancient Greece comes from the poetry of Homer and Hesiod.³ In Homer's *Iliad* and *Odyssey*, it is not unusual for individuals to resolve their conflicts simply by fighting. Quite often in the Homeric poems, persons seek vengeance as a means to redress wrongs, and that pattern of violent self-help was formative in early Greek law. Despite legendary traditions (which held that early Greek lawgivers were guided by gods), there is no historical evidence that early Greek law was founded on religious rules or divine commandment to restrain or remedy violence.⁴

In classical mythology, *Dikē* was a virgin daughter of Zeus. Early in Greek literature, writers began using the word "*dikē*" to refer to an orderly means of dispute resolution. Both Homer and the 8th Century B.C. poet, Hesiod, frequently referred to "*dikē*." Homer and Hesiod used the word *dikē* to refer to "law," "judgment," or in a more abstract sense "justice." Hesiod said that "*dikē* is a distinctive feature of human societies..."⁵ According to Sealey in his book *The Justice Of The Greeks*, "the goal of *dikē* or of law is to resolve disputes without violence."⁶

In Homer we do see evidence that archaic Greek society was beginning to explore an orderly means of dispute resolution. There are a number of instances, for example, in the *Iliad* where quarrelling individuals appeal to an impartial outsider in order to resolve their differences. On several occasions, a king acts as arbiter. There are, of course, a number of reasons why a king is a logical person to resolve disputes. First, a king is likely to be older and therefore have considerable experience. Second, as a rule, kings are thought to have received divine inspiration. Third, kings hold authority by consent of the aristocracy whom they rule. In addition, a king ordinarily has the power, the brute force, to enforce his judgments.

3. Although Professor Gagarin himself frequently uses Homer and Hesiod as evidence for early Greek law, he cautions: "[W]e do find a few explicit rules of behavior ... [in Homer and Hesiod]. But these rules concern a broad range of human behavior, and none of them is singled out as having a special status, not even those rules that we might be tempted to call laws." MICHAEL GAGARIN, *EARLY GREEK LAW* 11 (1986) [hereinafter "GAGARIN, *EARLY GREEK LAW*"].

4. See GAGARIN, *EARLY GREEK LAW* 15–16 ("A common view of law ... is that the earliest law ... is strongly religious, only becoming fully secular in its later historical development. Whatever validity this view might have with respect to other societies, ... religious factors are of little significance in the earliest stages of Greek law.") (footnote omitted).

5. GAGARIN, *EARLY GREEK LAW* 49.

6. RAPHAEL SEALEY, *THE JUSTICE OF THE GREEKS* 102 (1994) [hereinafter "SEALEY, *JUSTICE*"].