Introduction to Greek Law

Christopher L. Blakesley

University of Nevada, Las Vegas -- William S. Boyd School of Law

Follow this and additional works at: http://scholars.law.unlv.edu/facpub

Part of the Criminal Law Commons, International Law Commons, Jurisdiction Commons, and the Other Law Commons

Recommended Citation

http://scholars.law.unlv.edu/facpub/309

This Article is brought to you by Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact david.mcclure@unlv.edu.
he presides. All in all, the volume makes stimulating reading not only for the *Jubilar* but for all devotees of comparative law.

**INTERNATIONAL LAW**


*Reviewed by Christopher L. Blakesley*

*Greek Law*, developed under the stewardship of Professor Konstantinos Kerameus, takes on his character, being a solid, careful work of first rate scholarship. It presents the Greek legal system, the substance of each part of its civil public and penal law and procedure, in a series of well written and insightful chapters by many of the best Greek scholars (in the United States and in Greece) on each subject. The book is important, because Greece is in the Common Market and Council of Europe, and because the continental and even the common law systems owe their development to the Roman-Byzantine tradition. The continental civil law system was influenced by this tradition and, in turn, the modern Greek law and legal system were influenced by German, French and Swiss paradigms, so we can see the full circle.

Some of the chapters are comparative, providing the reader with not only insight into Greek law and the Greek legal system, but also insight into that of other nations as well. Indeed, a few of the chapters (Symeonides: The general principles of the Civil Law; Yiannopoulos: History, property; Kozyris: Conflicts, business associations) provide the rare opportunity to see law through the prism of top rung scholars intimately conversant in Greek, Continental, Common Law, and Mixed (Louisianian) legal thinking. This presents the reader with a banquet of rare insight into the nature of law in general, comparative law in its finest form, and understanding of how the legal analyst from each of these traditions thinks. Thus, *Greek Law* is a laboratory for the comparativist to delve into the mindset and analytical methodology of each of these systems. It provides insight not readily available elsewhere and would be an excellent tool for a course in comparative law. The other authors include many of the most prestigious legal minds in each of the fields of discussion. The book was written in English by each of the authors.

The book covers all of the essential topics of a legal system: history, sources, constitutional and administrative law, structure and distribution of state powers, the major organs of the state and its administration, judicial review as a means of controlling public admin-

---

* Professor of Law, Louisiana State University.
administration, human rights protection, the general principles of the civil law, the law of obligations, property, family law, urban and regional planning, successions commercial law, intellectual property, insurance law, business associations, admiralty and private maritime law, labor law, social insurance, judicial organization and civil procedure, conflicts of law, tax and investment incentives, and criminal law and procedure. Obviously, to have all of this in one volume requires summary and succinct description. The volume’s major problem is that the one volume space limit constrains the scope and depth of each chapter. Yet the book provides tremendous comparative insight into a continental legal system. Indeed, it calls for many of the authors to produce a major comparative article or book in English on his or her topic of expertise.

To provide a bit of the flavor, I will focus on a few of the chapters which I personally found of interest. Some were chosen because of their import for the comparativist as a bridge between the “civilian” and the common law models. Others I discuss, primarily because they are within my own interest and expertise. Some chapters, although done by masters of their subject, I do not discuss, because of my lack of expertise in the particular subject matter.

Chapter 1,\(^1\) presents the *Historical Development* of Greek law and the Greek legal system, from the mysts of classical mythology and epic poetry to modern Greece. It provides the reader with more than that, however. It is a concise and pithy summary of the legal history of Greek Civilization. We are reminded that not only legal philosophy, but also comparative law, have their origins in the works of Plato, Aristotle and Theophrastus, legal philosophers concerned with the ideal of justice, the sources and function of law. We are also reminded that the origin of systematic elaboration on a legal system is to be found in the works of the Roman jurisconsults.\(^2\) We learn that some things have not changed that much, even since the Classical period: although tribunals were not bound by precedent, judges and juries were impressed by it and prior cases were frequently cited in court. Demosthenes not only cited cases in his speeches, but also strived to distinguish adverse precedent.\(^3\) We even see some affinity to ourselves: Aristophanies’ comedies show how Athenians were fond of litigation, regarding it as a pleasant pastime.\(^4\) We also note that Greek law is the basis for Continental Civil Law and for Canon law, thereby influencing England, Continental Europe and America, as well.\(^5\) This is due to the early Greek con-

---

1. By Athanassios N. Yiannopoulos, W.R. Irby Professor of Law, Tulane University.
2. Greek Law at 3.
3. Id. at 4.
4. Id. at 4.
5. Greek Law at 4-5; Blakesley, “Family Autonomy,” Ch. 1, in Christopher Blakesley, Jacqueline Parker, & Lynn Wardle, *Contemporary Family Law: Principles, Policy & Practice* 1-16 (1988) (showing the significant influence of Roman, and Greek, law on English, hence American, family law.)
trol of the area from which our law sprung, the power of Greek philosophy, the influence the law and philosophy had on Roman law, not the least of which was the Byzantine origin of Justinian’s legislation of the sixth century Justinian’s Code, of course, was rediscovered in the Renaissance and “in the years following A.D. 1100, it was scientifically analyzed, adapted to the needs of the time, and again made an active force in the life of the people.”6 It is also interesting to note that the Continental vision of equity, not the distinct separate body of palliatory rules designed to ameliorate the harshness of the rigid law (as it was with the Romans and later the English), but as a built-in humanization of the whole legal system, where each rule is impregnated with equity and to be read as such, was of Greek origin. Each sentence in the chapter is heavy with meaning and import; Professor Yiannopoulos has the talent to put centuries of information in each sentence. I am sure that space limitations did not permit, but it would have been nice to see even more comparative analysis of the interrelationship and temporal association of crucial events and development of legal institutions in Rome, on the Continent of Europe, and in England. I have seen Professor Yiannopoulos and Professor Symeonides do this elsewhere.7

Chapter 3, on Constitutional and Administrative Law8 provides an overview of a continental type constitutional system, which emerged from dictatorship in the early seventies. Thus, it is interesting as a political phenomenon, as well as being a fine overview of the continental method and conceptualization of constitutionalism. The chapter covers the organization and function of the Greek system of government. The Greek Constitution, after the fashion of the German Basic Law, proclaims that “Greece, adhering to the generally acknowledged rules of international law, pursues the strengthening of peace and justice and the development of friendly relations between peoples and states (article 2). It also proclaims that "the generally accepted rules of international law, as well as international treaties, as from their ratification by statute and from their coming into force under the conditions each of them, shall constitute an integral part of greek domestic law and shall prevail over any contrary statutory provision. The rules of international law and international treaties shall be applied to aliens only on the condition of reciprocity." Thus, general principles of international law and ratified international treaties rank above legislation and below the Constitution.9

The judicial system is independent and has the power to review the constitutionality of legislation. The Greek system has administrative, civil, criminal and a Supreme Special Court (to hear cases of

7. Anthanassios N. Yiannopoulos, The Louisiana Civil Law System 1-63 (1977); Symeonides, id. at 3-216.
8. Prodromos D. Dagtaglou, Professor of Law, University of Athens.
unconstitutional legislation and to determine the existence and application of general principles of international law). While unconstitutional administrative acts and instruments may be declared null by the administrative courts, acts of parliament may be denied application by the judicial courts. The latter are bound by the Constitution not to apply laws the contents of which are contrary to the Constitution (art. 93 IV). Only the Supreme Special Court can annul an act of parliament for its unconstitutionality. The Council of State, at the head of the administrative court system, is a court of law, comparable to the French Conseil d'Etat, at the head of the separate French administrative court system. It is a court of first and last instance with jurisdiction over applications for review of administrative acts, violations of law by the administration, or abuse of discretionary power. It also functions as a supreme administrative court, hearing final appeals of lower administrative courts.

Chapter 4, The General Principles of the Civil Law, is very interesting. Much like the German General Part, the Greek Civil Code devotes the first five books to general principles which pervade the rest of the Code. Unless displaced or contradicted by more specific and explicit rules, these general principles control the entire substance and practice of civil law. The international lawyer could profit from reading this chapter, as it presents the conceptualization of how general principles work in a civilian system, which is how they are designed to work in the international arena, as well. This chapter is very important for any comparativist or any lawyer who needs to understand how a continental system works.

Although the general part is explicit in the Greek and German system, it is implicit in the French, Swiss, and other continental systems. Certain general principles absolutely control all interpretation and function of the civil and commercial law. Although this enhances systematization, helps avoid repetition, and provides a coherency to the law, it may be a trap to the unwary common law lawyer. One must understand the general principles and read the rest of the Code (or related legislation) with them in mind. One cannot simply look to the substantive code article(s) for the subject one is litigating or in which one is interested, and feel that one has the rule of law. For example, in a case involving the sale of a movable, one may have to look in the Code's provisions relating to transfer of ownership, elsewhere in the Code relating to contracts of sale, and, of course, in the general part dealing generally with juridical acts.

General principles relating to legal capacity and personality, domicile, absentia, rights, juridical acts (and important related matters, such as: capacity, vices of consent, form, formation of contracts, cause, content of juridical acts, nullities and interpretation), terms and conditions, representation and procuration, prescription and pe-

11. By Symeon C. Symeonides, Albert Tate, Jr., Professor of Law, Louisiana State University Law Center.
remption, are all covered by the general part. Each of these topics is
analyzed succinctly and articulately by Professor Symeonides. He
analyzes these topics in a manner that provides unparalleled insight
to the common law lawyer. Because he teaches common law and ci-
vilian subjects he sees the conceptual difficulties that the common
law lawyer has and he addresses them with clarity. For a glimpse at
how a civilian civil code system works, this chapter is a must. Pro-
fessor Symeonides should be cajoled into doing a national book on
the subject.12

Professor Symeonides discussion of Rights, for example, a sub-
ject not well understood by Americans is excellent. Americans gen-
erally have heard of the German concept of das Recht (Subjectives
Recht) or the French droit subjectif, but have a hard time grasping
its essence. This is the power granted by the law to each individual
to vindicate all legally recognized interests13 (and, incidentally but
most importantly, to promote social order, thereby). Each person in
society is enveloped, so to speak, by a bubble of right(s) which may
not be penetrated or violated. Right may not give way to wrong.
The state and each person has the right and obligation to vindicate
any right that has been violated. This leads to the notion of abuse of
right(s). Unlike the French, but like the Germans, Swiss and Aust-
rians, Greece has codified its law relating to the abuse of right(s).
Right is (rights are) so important that they reflect back at their
holder. If one has a right, it must be vindicated, but one may not
abuse that right to the detriment of others or another’s right. One
may not exercise one’s right(s) in a manner that injures others or
violates good morals and good social order. An action obtains to
vindicate one’s rights that have been infringed upon or violated by an-
other’s abusive exercise of his or her rights.

The discussion of consideration vs. causa is also first rate and a
must for those trying to relate to continental legal thinking. Profes-
sor Symeonides covers the distinctions and similarities between the
common law and civilian mechanisms for formation of contracts. He
also clarifies the distinctive (French v. German and Greek) uses to
which the concept of cause is put on the continent. This section like
the rest is succinct and articulate. One hopes that Professor Syme-
nonides will publish an expansive elaboration of this and the other top-
ics in his chapter.

Chapter 8, on Family Law14 is a brief overview of modern
Greek family law, which has recently been liberalized. It covers the
traditional codal elements of the Law of Persons: Marriage (includ-
ing nullity personal effects, matrimonial property regimes), divorce
(including grounds, procedure, and effects), the law of parent and

12. He has done this for his students in Louisiana Civil Law System: Symeo-
nides, supra n.6.
13. Greek Law at Ch. 4, p. 55.
14. By Anastasia Grammaticaki-Alexiou, Professor of Law, University of
Thessaloniki.
child, adoption, the legal effects of parentage, such as support, protection of minors and other held legally incapable. This chapter will provide the non-civilian with a brief overview of the civilian method of conceptualizing family law. Although space limitations did not permit, I would have liked to have seen a bit more elaboration on how the codal approach attempts to systematize all its aspects into a coherent whole. Family law is the perfect vehicle for this, because it is a subject controlled by a relatively few very important public policy principles, which permeate the entirety of the law relating to the family, thus providing a nice microcosm of how a civilian codal system is supposed to work. This does come through somewhat in the description of the recent attempt to liberalize family law, but could have been made more explicit and elaborated more fully. It is interesting to see how the traditionally controlling policy of patriarchy has given way, theoretically and formally at least, to the principle of equality of the sexes. This was done through a constitutional mandate proclaiming that “Greek men and women have equal rights and obligations,” which required and caused a revision of family law to incorporate the principle and repeal of all inconsistent legislation. An analysis of how patriarchy permeated family law in all its aspects (marriage, divorce, alimony, property division, child custody, etc.) as the paramount policy, controlling each of these issues, followed by analysis of how the code was amended to replace this policy with that of equality of the sexes, would have been most interesting. The allusion to the recent modernization provides some insight into this, but a more complete analysis would be welcome.

Chapter 18, on Criminal Law and Procedure\textsuperscript{15} provides an overview of the Greek Criminal Justice System. By virtue of its space limitations this chapter is quite summary. It does present the structure and basic theory behind the Greek system, but, perforce, does not address the serious conceptual differences between the Greek system and the Anglo-American approach. The chapter is very theoretical, formalistic, and structure oriented. The first part, fourteen pages long, covers all the basics of substantive criminal law, from a very continental, conceptualist perspective, including: its general principles, \textit{nullum crimen, nulla poena sine lege}, the structure of the criminal offense (\textit{actus reus}, illegality (proscription and no justification or excuse, mental culpability). The chapter, like Greek penal law is divided into the General Part and the Special Part. The Penal Code defines a crime as an act, illegal, imputable to the offender, and punishable under law.\textsuperscript{16} The chapter analyzes each of these concepts in turn. There is no discussion of the interesting questions related to causation, so important to Anglo-American criminal law. Space limitations prevent in depth discussion of the interesting nuances relating the various justifications or excuses.

\textsuperscript{15} By Dionysios D. Spinellis, Professor of Law, Panteios School of Political Science.

\textsuperscript{16} Greek Penal Code art. 141.
There is no strict or absolute liability under Greek criminal law. Nor is there any concept of corporate criminal liability. The Greek system of punishment includes a bifurcated system, including penalties (punishment for those capable of committing and who have committed crimes) and measures of security (for those incapable of criminality, but from whom society needs protection). In the special part, the chapter describes several of the basic crimes: Homicide, Abortion, Bodily Injury, Torture, Theft, Embezzlement, and Fraud.

Greek Criminal Procedure is presented in six and one-half pages, so there isn’t much space to get into detail. Professor Spinellis covers the institutions (criminal courts, public prosecutor), the parties, including the defendant, the court, and the civil party. He notes briefly, without discussion of whether it functions as intended, that the prosecutor is designed to be a neutral, objective authority, concerned only with finding the truth with the proper application of law. It would be interesting to see what keeps the prosecutor neutral and objective. What role does the judiciary play in this? What role does the defense attorney play? The chapter describes the various procedural stages of a criminal proceeding: the pretrial stage, the judicial council, the trial, and appeal.

The proceedings, of course are inquisitorial (not in any pejorative sense) in that they are reduced to writing (a criminal dossier is kept and becomes the main body of evidence, apart from the accused him or herself). At the trial itself, the presiding judge or president controls and does the questioning. First the prosecutor is asked to summarize the charges. Then the president of the court asks the defendant if he or she wants to provide the court with general information about the charges, but he is reminded that his defenses are to be given when the evidence has all been presented. Witnesses are then presented and questions are put to them by the president of the court, the other judges, the prosecutor, counsel for the civil party, and counsel for the defendant, in that order. After that, experts reports, etc. are presented. Finally, the defendant speaks to defend him or herself. The president, the judges, and the prosecutor may ask the defendant questions. All others may only put questions to the president to be asked by him. All evidence is presented in open court, the prosecution summarizes his or her case, the defendant and his or her counsel make the final statement, and the judges then repair to their chambers for deliberation. There are two types of appeals: de novo and appeal to the Supreme Court for error of law. The trial de novo is available for any ground related to the law or the facts. This goes to a court of second instance, where the case is retried, with essentially the same procedures as before. The appeal to the Supreme Court is permitted only against certain types of decisions and only for a limited number of grounds provided by law, consisting in errors of the decision or violations of law during the trial.17

While each of the chapters in *Greek Law* is necessarily short and begs for more expansive treatment, the book provides an excellent overview of not only the Greek Law and Legal System, but also of continental law and procedure generally. Some of the chapters, indeed, are jewels of clarity and sophistication. Comparativists would do well to read those chapters, as well as those which focus on the individual's tastes and specialty. The book should be on every university, law library, and comparativist's shelf.


*Reviewed by Wolfgang Fikentscher*

Rajeev Dhavan's introduction, almost 90 pages long, sets a scholarly framework for Galanter's erudite study of modern Indian (Indic) law. Dhavan describes the transformation of Indian law from pre-colonial and early colonial times to modern Indian statehood and independence.

Galanter's book is composed of five parts. The first deals with the general usefulness of studies in Indian law, the second with the emergence of the modern Indian legal system. The author demonstrates that modern Indian law forms an indigenous conceptional system, the elements of which may stem, at least in part, from the world of the foreign colonial ruler, but which are nevertheless integrated in the Indian culture as genuine Indian law. The third part deals with the legal concepts of the social structures, with particular regard to the changing legal conceptions of castes. Of special interest is part four in which the author demonstrates the pursuit of equality in a land traditionally characterized by hierarchy. Finally, part five is devoted to the legal staff, the judges, the lawyers, and to the social reform in which they participate in various ways and with divers contributions.

The essence of the book is that modern India lives under an internalized law and accepts its legal system as its own cultural property. Nevertheless this internalized law as such largely fails to be accepted by the general public who feels that it does not serve justice. The anthropologist of law would draw the consequence: Galanter describes modern Indian law as having been integrated and internalized in Indian culture, without having been developed from this culture. It is the interesting case of internalization without acceptance of a legal system.

---

* Professor of Law, Munich.