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PLATO'S LAW OF SLAVERY  
IN ITS RELATION TO GREEK LAW

BY  
GLENN R. MORROW

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To  
WILLIAM ALEXANDER HAMMOND  
IN AFFECTIONATE MEMORY

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G. R. M.



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## LIST OF ABBREVIATIONS

- Apelt.....Apelt, Otto, *Platons Gesetze*. 2 vols. Leipzig, 1916.  
*Archiv*.....*Archiv für Papyrusforschung*.  
 Beauchet.....Beauchet, Ludovic, *Histoire du Droit Privé de la République Athénienne*. 4 vols. Paris, 1897.  
 Bonner and Smith.....Bonner, Robert J., and Smith, Gertrude, *The Administration of Justice from Homer to Aristotle*. Chicago, Vol. I, 1930; Vol. II, 1938.  
 Bücheler-Zitelmann....Bücheler, Franz, and Zitelmann, Ernst, *Das Recht von Gortyn*. Frankfurt, 1885.  
 Busolt.....Busolt, Georg, and Swoboda, Heinrich, *Griechische Staatskunde*. Munich, Vol. I, 1920; Vol. II, 1926.  
 CIA.....*Corpus Inscriptionum Atticarum*. Berlin, 1873-1897.  
 CIG.....*Corpus Inscriptionum Graecarum*. Berlin, 1828-1877.  
*Dikaiomata* .....[Graeca Halensis], *Dikaiomata: Auszüge aus Alexandrinischen Gesetzen und Verordnungen in einem Papyrus des Philologischen Seminars der Universität Halle* (Pap. Hal. 1). Berlin, 1913.  
 England.....England, E. B., *The Laws of Plato*. 2 vols. Manchester and London, 1921.  
 IG.....Dareste, Haussoulier, and Reinach, *Recueil des Inscriptions Juridiques Grecques*. Paris, 1891-1904.  
 Kahrstedt.....Kahrstedt, Ulrich, *Staatsgebiet und Staatsangehörige in Athen*. Stuttgart-Berlin, 1934.  
 Kohler-Ziebarth.....Kohler, Josef, and Ziebarth, Erich, *Das Stadtrecht von Gortyn*. Göttingen, 1912.  
 Lipsius.....Lipsius, H. J., *Das Attische Recht und Rechtsverfahren*. Leipzig, 1905, 1908.  
 Meyer.....Meyer, Paul M., *Juristische Papyri*. Berlin, 1920.  
 OG.....Dittenberger, W., *Orientalis Graeci Inscriptiones Selectae*. Leipzig, 1903, 1905.  
 Ritter.....Ritter, Constantin, *Platons Gesetze: Darstellung des Inhalts und Kommentar*. 2 vols. 1896.  
*Sylloge*.....Dittenberger, W., *Sylloge Inscriptionum Graecarum*. 3rd ed., 2 vols., Leipzig, 1915, 1917. All references are to this edition unless otherwise specified.  
 Westermann.....Westerman, W. L., article "Sklaverei" in Pauly-Wissowa, *Realenzyklopädie der Klassischen Altertumswissenschaft*. Supplementband VI, 1935.  
 ZSS.....*Zeitschrift der Savigny-Stiftung*.

## INTRODUCTION

THE PRESENCE of slavery in the *Laws* has puzzled and distressed many of Plato's admirers. Some have interpreted it as a concession to customs of his age to which he was at heart opposed. Others have pointed out various humane aspects of his law of slavery and inferred that even if he did not secretly condemn the institution he at least endeavored to lighten its burdens. Still others have passed over the subject as something from which our gaze should be averted as quickly as possible. But before we can condemn, or excuse, or even properly understand Plato's attitude toward slavery we must first have a clear idea of the legal status of the slave under Plato's law, and compare it with the slave's position under the Greek law of Plato's day. Even a cursory examination shows that Plato's law of slavery, like the other parts of his legislation, is laid down with considerable legal precision; and the number of passages in the *Laws* that deal with slavery is surprisingly large, considering the humble position that slaves occupy in the state. So the systematic examination and exposition of Plato's law of slavery would seem to be both feasible and desirable, though such a task, so far as I know, has never before been undertaken.<sup>1</sup>

Besides throwing light upon its author's attitude toward this "peculiar institution," Plato's law of slavery may well contribute much to our understanding of Greek law. It is one of the most ironical mischances of history that the ancient people who first thought systematically about law in nature and in human conduct should have had so little of their actual legislation preserved. Of the work of the great legislators whose names were revered by all later Greeks—Zaleucus of Locri, Charondas of Catana, Pheidon of Corinth, Draco and Solon of Athens, 'Lycurgus' of Sparta—nothing remains except fragments scattered through the voluminous literature of antiquity, the inscriptions and the papyri. The material is in such an unpromising form that the task of reconstruction was for a long time neglected and the very existence of such a thing as Greek law ignored, if not even denied. But the absurdity of neglecting that aspect

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<sup>1</sup> Most students of the *Laws* have called attention to features of Plato's slave law and often have made penetrating comments; e.g. Ritter, in his commentary on the *Laws*; Jowett, in the Introduction to his translation; Chase, in *Harvard Studies in Classical Philology*, Vol. XLIV (1933); England, in the notes to his edition of the Greek text; Apelt, in the notes to his translation. But these comments have been at best fragmentary and sometimes misleading because of the absence of the juristic and historical background upon which alone the details can be understood.

of the Greek genius of which the Greeks themselves were especially proud could not persist forever, and the task of recreating Greek law from the fragments has within the last century attracted a steadily increasing number of workers. The discovery of the great inscription at Gortyn in 1884, together with other fragments of the legislation of Gortyn, gave a tremendous impetus to this enterprise by affording an unobstructed view of a large section of the actual laws in force in a fourth-century Cretan city. Since then the industrious collection and comparison of inscriptions, and the discovery of stores of Egyptian papyri, have put at our disposal much new legal material, of diverse origin in place and time, but by virtue of its very diversity opening up new perspectives and promising a broader basis for systematization than would have been deemed possible a half-century ago. We face the clear prospect of being able to understand Greek law, not indeed with the fullness and clarity with which Roman law has long been known, but with enough accuracy to be able to discern its characteristic principles and procedures, and something of the way in which they developed in the individual Greek cities.<sup>2</sup>

Among the literary sources of Greek law, the *Laws* of Plato occupies a unique place. It is a thorough, systematic, and detailed account of the legislation of an ideal fourth-century Greek city, accompanied by a commentary and discussion of principles. This is the sort of thing which, if it had been done for Athens or Corinth or Syracuse by some ancient observer, would be regarded as a priceless historical document. The fact that Plato did it for a city that existed only in his own imagination, and still more, perhaps, the fact that it was done by a philosopher interested (as the *Republic* shows) in a radical reform of existing institutions, may lead us to doubt whether it can be accepted as a guide to historical realities. But we must remember that the professed purpose of the *Laws* is to draw the outlines of a realizable, albeit second-best state; and such a task requires that the author stick rather closely to the realities of his time. Furthermore, we know that in the years after the writing of the *Republic* Plato had been much occupied with the practical problems of Greek politics. The Academy was founded, in part at least, to serve as a training-school for statesmen, and many of its members actually went out as legislators or legislative consultants to the Greek cities of their day. Plato himself went to Syracuse and tried to reform its

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<sup>2</sup> "Offenbar ist eine neue Disziplin im Entstehen," wrote Wilamowitz in 1910 (*Staat und Gesellschaft der Griechen*, p. 207).

government by working through the impressionable young tyrant Dionysius. Along with these ventures into practical politics there seems to have taken place a change of a profounder sort in Plato's philosophical views, a change that led him to value more highly the empirically given materials of history and politics.<sup>3</sup> Considering these contacts between the Academy and the political movements of the fourth century, and this more empirical attitude of Plato's later philosophy, we can be sure that the studies in the Academy were not confined to the delineation of Utopias, but dealt with the realities of fourth-century political life. No one has ever doubted Aristotle's value as a witness to his time. There can be no question that the foundations of Aristotle's mastery of the empirical details of Greek law and politics were laid during the years when he was a pupil in the Academy (years which coincided with the period of Plato's labors on the *Laws*) and that much of this mastery he owed to Plato.<sup>4</sup>

A special aspect of the more empirical approach of Plato's later years is his changed attitude toward the place and function of law. Whereas the guardians of the *Republic* are to exercise power without legal limitations, the sovereignty of law is the key-note of Plato's later political thought. This change of key is evident in the *Politicus*, which affirms that as the world now goes the only legitimate rulers are those who rule in accordance with a law more authoritative than their own will and wisdom. The sovereignty of law is emphatically and eloquently asserted in the *Seventh* and *Eighth Epistles* and is the very basis of the political structure of the *Laws*. (It was this doctrine, not the rule of the philosophers as expressed in the *Republic*, that formed the heart of Plato's teaching at Syracuse).<sup>5</sup> Consequently the disdain expressed in the *Republic*<sup>6</sup> for the details of legislation is replaced in the *Laws* by a pronounced interest in legal formulas and a concern, often meticulous, for niceties of detail. Even one who is disposed on general grounds to find a large measure of juristic matter in the *Laws* may well be amazed at the extent to which Plato's law incorporates details of procedure and technicalities of diction from positive law. But after all, Plato's later attitude toward law is the orthodox Greek attitude, and it should not surprise us that he, or any other educated Greek, should show a famil-

<sup>3</sup> See Sabine, *History of Political Theory*, chap. iv.

<sup>4</sup> For the debt of the *Politics* to the *Laws*, see Barker, *Greek Political Theory, Plato and His Predecessors*, pp. 380-382.

<sup>5</sup> See the author's *Studies in the Platonic Epistles*, pp. 139 ff.

<sup>6</sup> IV, 425-426.

ilarity with the principles by which the citizens of the *polis* regulated their relations to one another. The sharp distinction that now exists between law and morality, and the parallel distinction between lawyers and ordinary citizens, would probably have seemed strange to a Greek of the fifth century. The citizen had to be his own lawyer, for he might be required to defend himself any day in the courts. He was eligible to sit as a dicast in the city's courts, where his duty was to pass upon the law as well as the facts. He could sit in the Assembly where, if law was not exactly made in the modern sense, it was always being interpreted and frequently being set aside. Knowledge of the law was presumed to be a part of the equipment of the citizen; and if the Greek of the fourth century found it more difficult to acquire this knowledge than it had been for his grandfather, he was not yet ready to relinquish the ideal which the older tradition represented. Plato, it is worth noting, makes the study of the laws a fundamental part of the program of education in the *Laws*.<sup>7</sup>

The value of the *Laws* as a source of information regarding Greek law has often been asserted in vigorous terms. Mitteis called this work "the mirror of Greek law,"<sup>8</sup> and Keil pronounced it superior even to Aristotle's *Politics* as a guide to the spirit and details of the Greek legal mind.<sup>9</sup> Wilamowitz said we must dig in the *Laws* first if we would get at the roots of Greek legal thought and feeling.<sup>10</sup> But the systematic exploration of the *Laws* from the juristic point of view is still in its early stages. A promising beginning was made more than a century ago by Karl Friedrich Hermann in two small studies which for a long time had no successors.<sup>11</sup> Since the beginning of this century several serious studies have been made of special portions of Platonic law. Besides the comprehensive (but less detailed) inquiries

<sup>7</sup> VII, 811d ff.      <sup>8</sup> *Reichsrecht und Volksrecht*, p. 237.

<sup>9</sup> *Griechische Staatsaltertümer*, in Gercke and Norden's *Einleitung in die Altertumswissenschaft*, 2nd. ed., p. 382.

<sup>10</sup> *Staat und Gesellschaft*, p. 207. Wilamowitz prefaces this statement with a most interesting account of a conversation with Mommsen. "In the year 1873 I was travelling at night with Mommsen over the plain of Apulia toward Venusia. The first volume of his *Staatsrecht* had just appeared, and I spoke to him with youthful enthusiasm of the impression the book had made upon me and how I was thinking of doing something similar for the Greeks. And I ventured to express the opinion that my inquiry would differ from his chiefly in that for the Greeks one must above all read the philosophers, especially Plato's *Laws*. 'Yes indeed,' he replied eagerly and with full understanding. 'I should have read Plato too. It is perhaps too late for me now, and for that reason I can say very little about your Greeks'."

<sup>11</sup> *Disputatio de vestigiis institutorum veterum imprimis Atticorum per Platonis de Legibus libros indagandis; Juris domestici et familiaris apud Platonem in Legibus cum veteris Graeciae inque primis Athenarum institutis comparatio*. Marburg, 1836.

of Schulte<sup>12</sup> and Chase,<sup>13</sup> Plato's testamentary law has been studied by Bruck,<sup>14</sup> the homicide law by Goetz,<sup>15</sup> the law of the family by Becker,<sup>16</sup> and the economic regulations of Plato's state by Bisinger<sup>17</sup> and Lauffer.<sup>18</sup> These studies have clearly shown that Plato's laws are not merely Platonic, but Greek, both in spirit and in detail; and their success shows the desirability of pushing the inquiry into other special provinces of Plato's legislation.

It has sometimes been claimed that Plato's work was a powerful factor in the shaping of legal institutions in the Hellenistic and Roman periods. Burnet declared that the *Laws* was the "foundation of Hellenistic law," and thus came to exert a powerful influence upon Roman law.<sup>19</sup> The first part of this statement can hardly be taken literally, for the foundation of Hellenistic law is the Greek law of the classical period; but it may still be true that Plato's book had much influence in modifying the classical Greek law. The evidence for such influence is as yet, however, almost totally lacking.<sup>20</sup> The question is one which has been singularly neglected by students of the Platonic tradition, and its examination is the more in order just now in that the related question of the influence of Hellenistic law upon Roman law is attracting the attention of historians and students of comparative law. I have referred but rarely to Roman law and have never, I trust, used it as the basis for an inference as to the principle valid in Greek law. There is manifestly a danger in interpreting Greek practices in the light of Roman principles. The early students of Greek law, most of whom were continental scholars, were inclined

<sup>12</sup> Schulte, J., *Quomodo Plato in Legibus publica Atheniensium instituta respexerit*. Diss. Münster, 1907.

<sup>13</sup> Chase, A. H., "The Influence of Athenian Institutions upon the Laws of Plato," *Harvard Studies in Classical Philology*, XLIV (1933), 133-192.

<sup>14</sup> Bruck, E. F., "Die Entstehung des Griechischen Testaments und Platos Nomoi," in *ZSS, Rom. Abt.* XXXII (1911), 353-359. Cf. also Becker, W. G., *Platons Gesetze und das Griechische Erbrecht*, Ohlau i. Schl., 1930.

<sup>15</sup> Goetz, W., *Legum Platonis de Jure Capitali Praecepta cum Jure Attico Comparantur*, Darmstadt, 1912.

<sup>16</sup> Becker, W. G., *Platons Gesetze und das Griechische Familienrecht*, München, 1932.

<sup>17</sup> Bisinger, J., "Der Agrarstaat in Platons Gesetzen," in *Klio*, Beiheft XVII (1925).

<sup>18</sup> Lauffer, S., "Die Platonische Agrarwirtschaft," in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, XXIX (1936), 233-269.

<sup>19</sup> *Greek Philosophy*, p. 304; see also Barker, *op. cit.* pp. 307, 353. Is there such an implication in Mommsen's remark to Wilamowitz, quoted above (note 10)?

<sup>20</sup> Curiously enough the sole evidence that Burnet cites in support of his statement is evidence of the kind of influence which he says was less important, viz. the direct influence of Plato upon Roman jurists. For Burnet the more important fact is the indirect influence of Plato through Hellenistic law.

to approach it with the conceptual tools of the familiar Roman law. But of late a more cautious attitude has come to prevail. Enough is now known of Greek law to enable us to see that it has a character of its own and on certain points diverges sharply from Roman law.<sup>21</sup> It may be true that the two systems are fundamentally alike, either because they are both products of the legal sense of two peoples who were after all akin, or because Roman law was influenced in its development by the more precocious Greek law. But neither of these points can be clearly established unless we refrain from assuming them in our premises.

In the treatment of the many special problems that follow, I have endeavored first to elicit the principles underlying Plato's legislation on the point under examination, and to elicit them from Plato's text itself, appealing as little as possible to the evidence of positive law until Plato's principles were already clear. Sometimes this was not possible. Some curious detail of his law, some turn of phrase, could not be understood save in the light of principles and institutions not evident in the *Laws* itself. Because of the similarity between Plato's and Aristotle's political views—a similarity that becomes more striking the more one compares the *Laws* and the *Politics*—I have not hesitated on occasion to draw upon Aristotle for clues as to Plato's intentions. After the principles of Platonic law are laid bare, comes the nice task of comparison with positive law. The fragmentary and unsystematic character of the evidence upon which in the main we have to rely for a knowledge of Greek law makes the path of the interpreter no easy one. Here a reference in Antiphon to some "ancestral law" of the Athenians; here an inscription from Asia Minor giving the police regulations in second-century Pergamum; here a papyrus from third-century Alexandria; here a definition or statement of principle by the grammarians, referring presumably to Attic law—such are the sources with which one has to work. To use properly materials of such diverse provenance and content requires the utmost caution. I can only hope that I have generally avoided what Professor Shorey called the besetting vice of the philologist, viz. making the evidence prove more than it legitimately can.

<sup>21</sup> Vinogradoff, P., *Historical Jurisprudence*, II, 7; Wenger, L., *Recht der Griechen und Römer, passim*. We shall find, for example, that with respect to slavery there are marked differences between Greek and Roman law.