June 1995

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Chicago-Kent Law Review

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SYMPOSIUM ON ANCIENT LAW, ECONOMICS & SOCIETY*
PART I

JAMES LINDGREN, LAURENT MAYALI, GEOFFREY P. MILLER
Symposium Editors

INTRODUCTION

WHY ANCIENT LAW? James Lindgren, 1465
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THE DEVELOPMENT OF LAW IN CLASSICAL AND EARLY MEDIEVAL EUROPE

FOREWORD: SOCIAL PRACTICES, LEGAL NARRATIVE, AND THE DEVELOPMENT OF THE LEGAL TRADITION Laurent Mayali 1469

A GREEK CASE IN SEARCH OF AN ANTHROPOLOGICAL POINT Charles Gray 1479

This Article describes an ancient Athenian case about water damage in order to inquire whether recognizable modern legal categories identify the issues as they would have been understood by the Greek participants.

CHANGES IN THE POWER STRUCTURE WITHIN THE FAMILY IN THE LATE ROMAN REPUBLIC Christoph G. Paulus 1503

The political perturbances in Rome during the last century, B.C., influenced the relationship between fathers and their children. The example of testamental customs shows that children—unlike the time before—did not act any longer as they were supposed to until the middle of the first century B.C. The enactment of several laws tried to restore the former practice by imposing legal sanctions on what was previously governed only by morals or social behavior patterns.

* Due to the historical subject matter of this Symposium, the Chicago-Kent Law Review has modified its usual procedures. Since many of the supporting sources used in this Symposium are not available in the English language or are otherwise unusually difficult to obtain, the Law Review has been unable to verify the substance of many of the cites and has consequently relied heavily on the substantive accuracy of the authors. In addition, the Law Review has generally deferred to the authors' preferences regarding citation form.
LIMITING LIABILITY: ROMAN LAW AND THE CIVIL LAW TRADITION

David Johnston 1515

This Article concentrates on two modes of limiting liability in Roman law: the functional limit found in the law of contract and the financial limit found in the law of delict. It also discusses how certain seventeenth-century jurists reinterpreted the Roman texts so as to justify a functional limit in the law of delict and a financial one in the law of contract.

INTERPRETATION AND LEGAL REASONING IN ROMAN LAW

Peter Stein 1539

Already in the Roman Republic, the distinction between unwritten law and written law was recognized by the adoption of different methods of interpretation. In the early Empire, two “schools” of jurists emerged, one insisting on a strict, objective interpretation of all texts and emphasizing rationality and analogy in regard to unwritten law, the other adopting a wide interpretation of texts and relying on customary practice, the nature of things, and general convenience.

THE BIBLE IN THE SERVICE OF THE CANON LAW

R.H. Helmholz 1557

Surprisingly little has been written about the Bible’s role in the formulation of the classical law of the Western Church. This Article explores the nature and extent of the use of the texts of the Christian Bible, concluding that the Scriptures played a decreasing but not negligible role throughout the period before 1600. Using the examples of the law of blasphemy, prescription, and criminal procedure, this Article shows that the Bible was used principally to establish juridical norms for the law.

PUBLIC VS. PRIVATE ENFORCEMENT OF THE LAW IN THE EARLY MIDDLE AGES: FIFTH TO TWELFTH CENTURIES

Katherine Fischer Drew 1583

This Paper attempts to determine to what extent the early medieval justice system depended on private enforcement (even when the courts were public courts) and how the reliance on private enforcement blended easily into a new situation (discernible from the ninth through eleventh centuries) where even the public courts were partially displaced by the growth of private jurisdiction. Such private jurisdiction was characteristic of the feudal world although local institutions varied markedly from place to place.

THE LEGISLATOR’S MONOLOGUE

Marie Theres Fögen 1593

Since Antiquity, preambles served to express the relationship between rulers and subjects. After the French Revolution had abolished preambles by decree, the practice was revivified in some European countries in the twentieth century.

THE DEVELOPMENT OF LAW IN THE ANCIENT NEAR EAST

FOREWORD: THE DEVELOPMENT OF ANCIENT NEAR EASTERN LAW

Geoffrey P. Miller 1623
SLAVE AND MASTER IN ANCIENT NEAR EASTERN LAW

Raymond Westbrook 1631

This Article is a legal analysis of the institution of slavery, distinguishing between slavery and other servile conditions and between categories of slavery, such as native and foreign, debt and chattel. The Article also is a reconstruction of the rules and principles governing the creation and termination of slavery, the transfer of slaves, and the treatment by their masters in light of these distinctions.

HOUSEHOLD TRADE AND STOCK-BREEDING: SPHERES OF CONSUMPTION AND OF VALUE PRODUCTION IN MUSLIM FISCAL LAW

Baber Johansen 1677

Contrary to a general assumption, the Muslim fiscal law, and in particular the alms tax, differentiates between spheres of consumption (the household and, partly, the urban artisanal production) on the one hand, and spheres of value production (trade and cattle-breeding and, in other parts of the fiscal law, agriculture) on the other hand. This differentiation, important for the relationship between household and enterprise, is construed in terms of a model of circulation of goods and money from one sphere to the other which allows the owners of goods and commodities a large range of options concerning taxation or nontaxation of their property. While the alms tax clearly favors the household, i.e., the sphere of consumption as a tax-free unit, and does not provide a fiscal incentive to transfer goods from the household to the spheres of value production, it offers the individual merchant a rich choice of options, in particular that of treating the household as a tax-free storehouse for goods and commodities.

JUSTICE IN WESTERN ASIA IN ANTIQUITY, OR: WHY NO LAWS WERE NEEDED!

Niels Peter Lemche 1695

In this Article, it is accepted that the Mesopotamian law codes were not in fact a collection of laws to be followed by judges; instead they were part of a learned tradition. As a late reflection of the same tradition, we may count the biblical collection known as the “Book of Covenant” (Exod. 21-23). From Syria and Palestine in preclassical Antiquity, no written laws have survived, nor any indication that such laws ever existed. The reason should be traced back to the basic social structure of this part of the ancient Near East: a patronage system, dividing the inhabitants into patrons and clients. No patron needed written laws to enact justice, and instead of judges in the modern sense of the word, they employed a system of middlemen—arbiters—who on their behalf could distribute “justice” among the various patronage groups in a certain region. This system is reflected by the institution of the office of the judge as described in Deut. 16, 18-20.

"IN ACCORDANCE WITH THE WORDS OF THE STELE": EVIDENCE FOR OLD ASSYRIAN LEGISLATION

Klaas R. Veenhof 1717

This Article presents and analyzes new data on Old Assyrian legislation (ca. 1900 B.C.E.) drawn from references to written law contained in letters and verdicts. This information is compared with what we know about form, content, and function of roughly contemporary laws from the Old Babylonian period.

MODELLING BIBLICAL LAW: THE COVENANT CODE

Bernard S. Jackson 1745

This Article argues against the application to early Biblical law of a “legal model” which assumes that: (a) court adjudication is a normal method of dispute resolution; (b) the practice of adjudication necessarily involves the application of rules; and (c)
the only kind of reading of “legal rules” is a “semantic” reading, and proposes an alternative model of “wisdom-laws” in which: (a) private settlement through “self-executing laws” is preferred; (b) adjudication proceeds from a combination of custom and contextualized, intuitive justice; and (c) when rules are verbalized, they are intended for a “narrative” reading. The character, history, and literary presentation of the norms of the “Covenant Code” (Exod. 21-23) are studied against the background of such competing models, as are the rival claims to appropriate and manifest the ideology that all justice is divine.

**J as Constitutionalist: A Political Interpretation of Exodus 17:8-16 and Related Texts**  
Geoffrey P. Miller 1829

This Article argues that certain central texts from the Book of Exodus in the Bible, especially the account of the Israelites’ wilderness battle against the Amalekites, should be understood as functioning, at the time of their creation, as part of the Constitution of the society of Ancient Israel. Through the use of symbolic language, these texts defined basic governmental powers and allocated these powers among competing social and political institutions.

**STUDENT NOTES AND COMMENTS**

**Babies Jessica, Richard, and Emily: The Need for Legislative Reform of Adoption Laws**  
Andrew S. Rosenman 1851

This Note begins by outlining the complicated factual and procedural histories of three highly-publicized adoption cases. It delineates the frequent conflict between the rights of unwed, natural fathers and the best interests of adopted children. The Note concludes by proposing several reforms that are designed to both expedite the adoption process and give due consideration to the interests of all parties involved, including the child.
SYMPOSIUM ON
THE ADMISSION OF
PRIOR OFFENSE EVIDENCE IN
SEXUAL ASSAULT CASES

Dale A. Nance
Symposium Editor