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COMMENTARIES

GREEK LEGAL HISTORY— ITS FUNCTIONS AND POTENTIALITIES*

HANS JULIUS WOLFF**

I

I am grateful for the opportunity to speak to you about my specialty, the history of the Greek law in antiquity. Ancient Greek law—to name the utter limits of the subject—is the law that was observed by Greek-speaking people from the time of Homer¹ through the classical era (mainly the law of Athens in the fifth and fourth centuries B.C.) to the Hellenistic times (the laws of the Macedonian-Greek monarchies carved out of Alexander's empire in Egypt, Syria, and elsewhere, including the forms they took after these countries were incorporated into the Roman Empire).

To the average lawyer, Greek legal history is an absolute *terra incognita*. Even those who are interested in the history of the law, and, I am sorry to say, even most of the Romanists, are not prepared to grant Greek legal history a greater value than perhaps that of a nice hobby, for which of course the man who is busy with legal work has no time. Worse than that, I have to admit that such feelings are not entirely unjustified. For it is true that ancient Greek law has had only a very slight impact on the legal systems of our time. Even the civil law of Greece until some decades ago was based on the so-called *Basilica*, a paraphrase of Justinian's compilation of Roman law, and is now shaped broadly after the pattern of the German Civil Code. Only a few scattered institutions of ancient Greek law have found their way into modern systems. Examples are the law of jettison and rules concerning illegitimate children that were incorporated in late Roman legislation and, in a modified form, are still found in the codes of some of

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1. The eighth century B.C., more or less.

the Latin countries in Europe and South America. Some of the methods of notarial documentation that are still in use also had their origin in the Hellenistic period. Beyond that, however, there is little that our laws owe directly or indirectly to ancient Greek law, as far as positive institutions are concerned—in contradiction of course, to legal philosophy, which exerted more influence; but with this I am not here concerned. I said “indirectly;” by this I am referring to recent research into the so-called postclassical development of the Roman law. That research has established—in contrast, it is true, to what Romanists thought forty or fifty years ago—that legislation and legal literature in the period beginning with Constantine were *not* characterized by wholesale incorporation of ideas originating in the eastern lands of the Empire, in particular, in its Greek parts.

Given this situation, the historian of Greek law is obliged to explain why he feels that from the standpoint of *general jurisprudence* the study of Greek law has a function and value. By this I mean an interest reaching beyond a merely pragmatic, antiquarian interest in the past. Ascertaining what existed is a necessary and important task, for it provides us with the indispensable basis from which we can try to interpret the facts from a legal point of view. But unlike the philological scholars, many of whom, in the 19th and 20th centuries, have done research into Greek legal history (and some of them have produced excellent work²), the jurist must try to understand the facts from the standpoint of juridical doctrine and try to discover the religious, political, social, and economic conditions forming the background of, and often providing an explanation for, institutions which at first sight may look rather strange to us. Insofar as we succeed in this, we shall indeed be in a position to serve an important purpose of general jurisprudence, because we can contribute to the overall knowledge of how law grows and what factors cause and promote this growth.

This is what I wish to discuss today. It involves the problems of what Greek legal history can achieve and where its limits are, and, at the same time, what methods and approaches will achieve results and what methods and approaches should be avoided.³

2. Suffice it to mention the most recent work, which is A.R.W. HARRISON, *THE LAW OF ATHENS* (1971), in two volumes, the first of which is *THE FAMILY AND PROPERTY*, and the second, *PROCEDURE*. The treatise, unfortunately unfinished at the author's death, is highly informative, though not entirely satisfactory from the legal point of view.

3. For a brief summary of the Greek legal system, see Wolff, *Griechisches Recht*, https://openscholarship.wustl.edu/law_lawreview/vol1975/iss2/3

II

Let me begin with the last question. It is in the nature of the sources at our disposal—literary sources, primarily Athenian rhetors of the fourth century B.C., inscriptions on stone, and, for Hellenistic law, thousands of Greek papyrus documents from Egypt—that they show us the law in action in the form of statutes, court pleas, petitions, contracts, and the like. There is, however, no legal literature in the technical sense of the word, for, peculiarly, the nation that first developed scientific interests and methods never felt the urge to analyze its own laws. It left to us the task of finding dogmatic categories that will help us to classify and possibly to systematize the phenomena. In the nineteenth century, scholars tried, understandably enough, to use for this purpose the concepts the Pandectists had distilled from the sources of the Roman law, and which on the European continent were considered the absolute and eternal substrate of every legal system; this was, to name only the most conspicuous example, the approach used by L. Beauchet in his four-volume work, published in 1897, on the private law of the Athenian republic.⁴ Today we know that the Romanist approach often blocks rather than opens access to the notions upon which the Greeks shaped their institutions, methods, and forms. This is not to deny that Romanist terms often can be helpful in making Greek legal phenomena more easily understandable to our own minds; but we should never try to impute them to the Greeks themselves. Their categories were not those of the Romans, and neglect of this fact has often led to the result that explanations and identifications, suggested by modern scholars, not only conflict with the language of the sources, but even distort anachronistically the picture of the institutions or ways of legal thinking under discussion. For example, the Greeks did not know the strict forms of contract of the Romans. It has been established nevertheless that the Greeks did not derive the contractual obligation from the mere agreement of the parties in the manner of the Roman consensual contract, as was the general belief until recently. Rather, to them, the source of the obligation was some real act of dis-

in LEXICON DER ALTEN WELT 2516 (1965). A shorter version of this survey, in English, appeared in 8 ENCYCLOPEDIA BRITANNICA, *Greek Law*, 398-402 (1975). Older and partially obsolete works are J.W. JONES, *THE LAW AND LEGAL THEORY OF THE GREEKS: AN INTRODUCTION* (1956); 2 P. VINOGRADOFF, *OUTLINES OF HISTORICAL JURISPRUDENCE: THE JURISPRUDENCE OF THE GREEK CITY* (1922).

4. L. BEAUCHET, *HISTOIRE DU DROIT PRIVÉ DE LA RÉPUBLIQUE ATHÉNIENNE* (1897).
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posal, normally on the part of the creditor and not quite dissimilar to common law consideration, pursuant to which the debtor had undertaken to pay or do something. Likewise, the Greeks did not distinguish in the manner of the Romans between *actio in rem* and *actio in personam*, nor did they—in spite of an utterance of Aristotle's that seems to support this view⁵—acknowledge the *summa divisio* made by Gaius⁶ between *obligationes ex delicto* and *obligationes ex contractu*.

To sum up, we have to start from the supposition that the ancient Greeks possessed a set of legal precepts of their own and that it is our task to bring these to light. The first to show how this can and should be done were two great legal historians, Ernst Rabel and Joseph Partsch.

III

The foregoing observation may have sounded like a truism, and it would be one if it hadn't been neglected for so long. Let us now consider what it means in terms of practical potentialities of research. What kind of problems follows from it? To answer this question we have to realize certain limits drawn by the very nature of our subject.

We are faced at once with the fundamental fact which I have mentioned already, the absence of a Greek legal science. Never did Greeks—for reasons which I cannot discuss here⁷—attempt to penetrate the background, essence, or implications of their institutions. No work was ever written that sought to elucidate those institutions' practical consequences by using a case method analogous to that of the Romans. There was not even an attempt—which might have been more congenial to the Greek mind—to produce a systematic survey of the law by means of dialectical analysis. It is true that the forensic orator had to be familiar with the statutory law; there was some study of it in the rhetorical schools of fourth century Athens, and probably elsewhere. There was also a certain amount of discussion of legal problems in the philosophical literature from the sophists to Aristotle and his pupils. But all this has little to do with real jurisprudence.

5. Cf. ARISTOTLE, *NICOMACHEAN ETHICS* 1131a (I. Bekker transl. 1831). See also H.J. WOLFF, *Der Rechtshistoriker und die Privatrechtsdogmatik*, in *OPUSCULA DISPERSA* 41, 51 (1974) (discussing the fundamental difference between the statements of Aristotle and Gaius).

6. 3 GAIUS, *INSTITUTIONES* § 88.

7. See H.J. WOLFF, *Rechtsexperten in der griechischen Antike*, in *OPUSCULA DISPERSA* 81-102 (1974).

The rhetorical books that we have, of which the foremost is Aristotle's *Rhetoric*, show that the rhetorical training was aimed at enabling the orator to find convincing arguments, but not at making him thoroughly familiar with the law for its own sake. Juridical arguments in philosophical writings consisted of drafting schemes of utopian legislation, as in Plato's *Laws*, or served as background material for the discussion of the problems of justice and ethics; the outstanding example of this kind of literature is Aristotle's *Nicomachean Ethics*. The only exceptions known to us, and probably the only ones that existed, were descriptions of constitutions by Aristotle and his pupils (we possess Aristotle's *Constitution of Athens*) and a comparative survey of legal institutions written by Aristotle's pupil, Theophrastus, of which we have a fragment. The Hellenistic period seems to have been even less interested in specifically legal studies than the classical period; the positivistic work inaugurated by Aristotle and Theophrastus was never followed up. There was no study of law in the great universities of the time, such as those in Alexandria or Pergamon. The first *jurists* among the Greeks were those who dealt with Roman law.

The effect of all this was that Greek states never saw a class of legal experts of high standing. What came closest to it were the draftsmen of legal documents, who were a typical feature of the Hellenistic era. But they were no more than skilled technicians who knew the formulas and were quite good at drawing up the contracts needed by the rather highly developed economy. They were not in a position, however, to work out refined principles concerning, for example, the formation and validity of agreements or the treatment of negligence in the fulfillment of contracts. Nor was there anything like a theory of *bona fides* in obligations, a distinction between ownership and possession, or a hierarchy of the various possible types of title to property (ownership, easements, and the like). Moreover, there is no evidence that the intellectual level of advocates or judges was any higher than that of the draftsmen. This is not to say that attempts at grasping the real meaning of laws were entirely lacking. There seems to have been some discussion of the sort among the Attic orators; I shall return to this point shortly. But the fact remains that those were isolated instances and by no means real symptoms of an organized effort to achieve a deeper insight into the workings of the law.

This situation cannot help having consequences for our own study of Greek and Hellenistic law or, rather, laws (for each of the numerous

states had its own set of statutes, courts, and institutions, which, of course, differed from one another to some degree). Some authors did try to discover in Greek forensic speeches, and even in the texts of some contracts, sophisticated doctrines, the existence of which would have entitled the Greek lawyers to be rated as equals of their colleagues in modern civilized countries. For instance, the Greek scholar Themistokles Tsatsos⁸ sought to interpret a fourth century B.C. inscription containing the text of a contract (between the Euboean city of Eretria and a man who undertook to drain a huge swamp) to the effect that it was based on the doctrine of *clausula rebus sic stantibus* in its most modern version, comparable to the French theory of the *faits imprévus* or the German theory of *Geschäftsgrundlage*. In order to reach this result, Tsatsos took it for granted that the Greek notion of contract was the same as that of modern civil law—an agreement involving enforceable mutual obligations of the parties. This, however, was precisely wrong, because all a contract could provide for, considering the procedural possibilities of the time, was a liability for damages caused by the frustration of expenses incurred in consideration of the promise made by the other party. Consequently, there simply was no room for adjustments such as Tsatsos assumed might have been made when unforeseen developments called for changes.

It must be said, unfortunately, that expectations, nourished by Tsatsos and others like him, are illusions. We cannot hope to find in the sources of ancient Greek law the type of juridical thinking to which we are accustomed. This means that, from the standpoint of method, it is a mistake, leading nowhere, to approach those ancient sources with concepts of our own, such as those that were developed in the continental countries of Europe by the Pandectistic science and grew in the common law countries out of centuries of an ever refined judicial experience.

It is necessary to urge this caution precisely because we do find in the Attic rhetors passages that show a remarkable skill in going beyond the bare words of statutes and making out their real meaning and intention (this occurred in cases involving the *graphé paranomon*, an action devised to check the "constitutionality" of legislative propo-

8. TSATSOS, *Der Chairephanesvertrag. Der Einfluss unvorhergesehener Ereignisse auf den Inhalt des Vertrages im antiken griechischen Recht*, in SITZUNGSBERICHTE DER AKADEMIE DER WISSENSCHAFTEN ZU HEIDELBERG, PHILOSOPHISCH-HISTORISCHE KLASSE, No. 1 (1963); cf. Wolff, Book Review, 81 ZEITSCHRIFT DER SAVIGNY STIFTUNG FÜR RECHTSGESCHICHTE, ROMANISTISCHE ABTEILUNG 340 (1964).

sals).⁹ As another step in the direction of true legal reasoning I may mention an effort by the fourth century B.C. Athenian orator Hyperides (in his speech against Athenogenes) to use the method of analogy to draw an argument from a statute not immediately pertinent to his case. There were probably other instances of the same sort, unknown to us for lack of sources. Still, what is important is the fact that these were exceptions. As a rule, Athenian courts and advocates clung strictly to the words of the statutes, so that there was hardly any room for an expanding or modifying interpretation of the laws. Discussions that indeed were going on in philosophical circles were immaterial as far as the daily practice was concerned. Modern attempts to read into the sources of Athenian law something like a jurisprudence of equity resulted from an optical illusion caused by philosophical theories and by rhetorical tirades of orators and their play on emotions. The same is true of Hellenistic jurisprudence. Occasional application of equity principles was the result of exceptional intervention by monarchs or unsystematic arbitrariness of officials.¹⁰

IV

I have been dwelling at length on what I am afraid we have to call the negative aspect of Greek law from the jurist's point of view. As a matter of fact, there have been Romanists who brushed the Greek law aside because they thought that a law without jurists could be no more than a chaotic conglomeration of statutes, made *ad hoc* as the need arose, devoid of any juridical interest. What then is the *jurisprudential* value of Greek legal history? Let me try to answer this question by putting before you a selection of what I think are some of the truly jurisprudential problems posed by the Greek law.

With the historians of some other laws of the past, such as the systems represented by the tablets or the Biblical law, as well as the old Germanic and English laws, the historian of Greek law shares an advantage the Romanist is lacking. It is that he possesses contemporary sources—the Homeric epics and Hesiod's poems—that allow him to ob-

9. Cf. WOLFF, "Normenkontrolle" und Gesetzesbegriff in der attischen Demokratie, in SITZUNGSBERICHTE DER AKADEMIE DER WISSENSCHAFTEN ZU HEIDELBERG, PHILOSOPHISCH-HISTORISCHE KLASSE, No. 2 (1970).

10. Cf. H. MEYER-LAURIN, GESETZ UND BILLIGKEIT IM ATTISCHEN PROZESS (1965); Meyer-Laurin, *Billigkeitserwägungen griechischer Beamter im ptolemäischen Ägypten*, in PROCEEDINGS OF THE XIITH INTERNATIONAL CONGRESS OF PAPHYROLOGY, UNIVERSITY OF MICHIGAN 309 (D. Samuel ed. 1970).

serve archaic conditions, methods, and modes of legal thinking at a stage inaccessible to the Romanist except by extrapolating from later developments. I cannot do more than mention this opportunity, which so far has not been exploited to the extent it deserves. It is hardly necessary to emphasize the importance of this opportunity as one of the avenues leading to the very roots and beginnings of the methods of tackling social problems by legal means.

Even more important, however, is another opportunity offered to the Greek legal historian by the very nature of his material. It lies in the fact, unparalleled as it seems, that the daily application of legal principles in the Greek city-states and Hellenistic monarchies rested on a harmonious combination of archaic forms of legal thinking, never fully articulated and therefore never quite shedding their primitive character, and an advanced legal technique that was perfectly capable of satisfying the social and economic needs of the day. In Athens, this technique centered in a somewhat rigid, but well-ordered system of courts and procedure; in the Hellenistic states and in Roman times, it was the draftsmen whose inventiveness and ability to devise schemes for complicated transactions surpassed the talents of even their Roman contemporaries.¹¹ If I am not mistaken, it was this dialectical relationship between primitive, and, in fact, only half-realized, dogmatic concepts and a sophisticated technique that enabled those draftsmen occasionally to bring about results that the much more learned, but less naive, Roman jurists at best achieved less perfectly and with difficulty.

An instructive instance of this is the way in which Greek draftsmen in Egypt made possible the assignment of claims and contracts giving third parties a right to bring suit in their own name against the debtor, transactions not admitted under Roman law. This was by no means due to an unprincipled, thoughtless yielding to what happened to be the economic interests of certain people. It rested, to the contrary, on the time-honored notion that the relationship between creditor and debtor was not merely, as it was under Roman law, a *vinculum iuris*, that is, a purely personal bond tying the debtor to the creditor and only the creditor, but was a kind of dominion, similar to that over objects, which entitled the creditor to seize the property, and, in some cases, the person, of the defaulting debtor and which, like any other dominion, could be freely turned over to somebody else.

11. Cf. F. PRINGSHEIM, *THE GREEK LAW OF SALE* 501 ff. (1950).

From the standpoint of general legal theory this instance is interesting. It shows that the ancient idea of liability in the primitive sense of submission to possible seizure by the creditor still determined the treatment of the problem in Hellenistic and Roman Egypt, notwithstanding that at that time the economic purpose of the contract—to provide the creditor with a claim to performance of the debtor's promise—had long penetrated the consciousness of the people. It would be easy to prove this from the sources.

This discrepancy between the legal and the sociological situations was real, not merely theoretical. Another consequence will make this clear. Contractual liability, in the last analysis, resulted from the tort of frustrating the creditor's expense, thereby causing him concrete damage in the form of a real loss to his fortune.¹² Consequently, it was only at a late stage, if ever, that Greco-Egyptian draftsmen found a way to make the debtor responsible for the merely hypothetical damage suffered by the creditor through the frustration of gainful dealings that would have been possible to him had the debtor fulfilled his obligation. As is well known, the English law did not achieve this progress before the famous *Slade's Case* of 1602.¹³

The phenomenon just mentioned has a bearing upon the philosophical question of the mutual relationship of economic and sociological desirability, on the one hand, and juridical dogma, on the other, as factors operative in legal progress. It illustrates how sometimes the latter may be the determining element; the force of established legal notions may be strong enough to counteract the tendency toward the unfettered creation of ad hoc legal devices inconsistent with the basic spirit of the system. I should like to emphasize that the jurisprudential import of this fact is enhanced rather than diminished by the Greek legal technician's use of accepted tenets to bring about novel results in ways that helped them to get around doctrinal barriers that their legal conscience did not allow them simply to jump. Unfortunately time does not permit me to elaborate on this highly interesting aspect, which was first discovered and described by Ernst Rabel.¹⁴ I have to confine myself to only one instance, the sale on credit: the Greeks obtained its prac-

12. The Greek name for this tort is *blabe*.

13. 76 Eng. Rep. 1074 (K.B. 1602).

14. This was the subject of a famous comparative investigation, Rabel, *Nachgeformte Rechtsgeschäfte* (pts. 1 & 2), 27 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE, ROMANISTISCHE ABTEILUNG 290 (1906), 28 *id.* at 311 (1907), reprinted in 4 E. RABEL, GESAMMELTE AUFSÄTZE 9 (1971).

tical effect by combining a contract of sale—its traditional character, necessarily a cash transaction, was never altered—with an agreement that the buyer owed the price as a loan received from the seller. Seemingly a fiction, in reality this scheme was a consequence of the rationale that, because the exchange had already taken place, the money was considered as already belonging to the seller.

V

Let me now suggest a second set of problems. They, too, concern the relationship between the law and its social, economic, and political background, but they do so in a sense opposite to the one just considered. The cases just observed serve as illustrations of the conflict and possible reconciliation between traditional legal notions and changing conditions of life. They exemplify the situation, not infrequent in ancient Greek law, in which the conflict presented itself as a dialectical play of action and counteraction, characterized by the reality that fundamental concepts that might be modified, but could never be abandoned, were, in the last analysis, the determining factors in forming the legal devices required by society. The facts to which we now turn will show the opposite phenomenon: the shaping of legal formations in accordance with the needs, and adapted to the specific character, of the social and political setting that they were destined to regulate.

The family lends itself to the study of this problem more readily than does any other institution. How and to what extent does the legal organization of the family reflect the sociological character and the political order of the society to whose integration it contributes? Ancient Greek and Hellenistic history knew various types of society, widely differing from one another, and it seems that this resulted in different forms of domestic order, especially regarding the status and capacity of women. Two examples will be useful.

In classical Athens the *oikos* or “house,” as the family of the individual citizen was called, was a patriarchally governed unit, based principally on descent (although adoption was permitted and extensively practiced) and held together by religious ties. Legitimate birth into an *oikos* was, except for naturalization, an indispensable condition of citizenship (even the validity of an adoption depended on the adoptee’s legitimate birth into another citizen’s family). An adult son might separate from the house of his father and set up his own *oikos*. Until then, however, he had only an immaterial share in the family property,

which was managed by the father of the house. A woman had no share of her own and was subject to the power (*kyrieia*) of her father or husband, respectively, the primary manifestation of which was the *kyrios*' right, through the performance of certain prescribed formalities, to give the woman in legitimate marriage to another citizen. When the father of the house died, his sons become the *kyrioi* of their unmarried sisters. Upon the father's death, his estate fell to his sons, who divided it among themselves; in the absence of sons it fell to collaterals, unless the father had adopted an heir by will. Testate succession was possible only in the absence of sons, and women could not personally succeed. A brotherless daughter was called an *epikleros*, the literal meaning of which is "on the *kleros*" (estate). The expression "heir-ess", used by modern authors, is really a misnomer, for she did not, at least strictly speaking, inherit anything, but served only as an intermediary. Her sons became heirs of their maternal grandfather when they became of age, thus, in a way, securing the continuance of their grandfather's *oikos*. An *epikleros* who had no son might be claimed into marriage by her father's nearest agnate, who then became the *kyrios* of the estate until a son, born to him and the *epikleros*, reached maturity. The agnate's right extended to the point that he might even break up an existing previous marriage of the *epikleros*.

Together with some other features, which I have omitted, the whole system was designed to perpetuate the existence of the *oikoi* as long as possible and, as far as possible, to prevent family estates from falling into the hands of other families. The *oikoi* in their totality formed the foundation on which the *polis* (city-state) as a religio-political community rested. Even in the democratic period, the citizenry—actually only a relatively small fraction of the total population—sought, at least fictitiously, to maintain the principle that it was a body united by common descent—perhaps a remnant of a remote tribal past. This is why the system, including its rather inhuman features, such as the law of the *epikleros*, persisted into the fourth century B.C., and possibly even beyond. By that time, its original connection with the religio-political order was no longer understood by the Athenians themselves, as can be seen in the comedies of the late fourth century playwright Menandros.

I have given this somewhat detailed description of the Athenian system because it shows in an exemplary fashion how closely legal institutions may be tied to their socio-religious preconditions. This fact

receives additional weight in the light of recent research, which has established that the Athenian system was not at all common to all Greeks. The best-known of other systems, and, at the same time, one that represents, in an equally exemplary fashion, a totally different type, is the one now being uncovered in the Greek papyri of Egypt.

If we disregard, as I must do here, a few Greek *poleis* (Naucratis, Alexandria, Ptolemais), the nucleus of the Greek-speaking population of Ptolemaic Egypt¹⁵ were men who had come into the country as members of the armies of Alexander the Great or the first Ptolemy.¹⁶ They were joined later by others, most of whom also had entered the service of the kings. Each of the men came as an individual. What held them together—apart from a certain pride of being Greek, which, however, created no more than a psychological bond—was their common loyalty to the king. Those who had come from Hellenic *poleis*, and for a while even their descendants, maintained a theoretical allegiance to their places of origin, but for all practical purposes the ties were broken.

The result was an individualistic society that had little in common with the old *polis* society. The old Greek cults, inseparably tied to the closely knit social organism integrated into each *polis*, gave way to new, universal religions, chiefly the one centering around the god Sarapis. Accordingly, the place of the *oikos* was taken by a more modern kind of family, consisting of a father, mother, and children, and resting on the personal relationship of its members, but no longer understood as a religio-political unit. Consequently, only remnants of the old family law survived. The *kyrieia* over women was changed into a mere guardianship; this, as it seems, occurred for no reason other than a doctrinaire attitude of the Ptolemaic government, which thoughtlessly clung to traditional patterns. In at least some other places, such as the Kingdom of the Seleucids in Syria, the obsolete institution was dropped. Women were capable of owning and disposing of property; they could inherit and leave their estates to heirs of their choice, as could men. The institution of marriage was relieved of its function as a means of preserving the *oikoi*. Its conclusion was no longer a solemn transaction between the *kyrios* of the bride and the young husband or his father, dependent on the observation of certain formalities, but could be achieved by an informal union of the couple. There were no more

15. Late fourth through first centuries B.C.

16. One of Alexander's generals, who made himself king of Egypt.

bans on intermarriage with persons of different origin, such as, for instance, had been a feature of the democratic law of Athens. Divorce was free and could be obtained by either spouse simply by severing the relationship. Particularly interesting, for all that appears, is that, at least in Egypt, most or all of these changes did not come about by legislation, but by a slow and gradual dropping of old customs that appeared obsolete and senseless.

The Athenian and the Ptolemaic types of family organization are two well-documented illustrations, which we are fortunate to possess, of the opportunities offered by Greek legal history for the study of the interdependence of the law and its socio-political background. Actually, the sources, especially the inscriptions on stone from all parts of the Greek world, leave no doubt that there were more and still different types. Time limits, but even more the hitherto limited exploration of these sources, prevent me from giving you a detailed account. Suffice it to mention two significant features. The law of the Cretan city of Gortyn, known to us from a gigantic inscription of the fifth century B.C. containing the bulk of the statutory law of that city, does not seem to have known an Athenian-type *kyrieia* over women, although women were to some extent subject to the head of the family there, too. The status of women in Delphi and other states of Central Greece seems also to have been freer than in Athens, if some manumission deeds, executed by or in cooperation with women, and preserved in inscriptions from Delphi, give the correct impression. Although this is just an impression that needs to be checked, it looks to me as though the family in the peasant areas of Central Greece was organized rather more along the lines of a community giving equal rights to all its members, including women, than along the lines of the patriarchal *oikos*. There is still a wide and promising field of research open, if and when legal study of the inscriptions, still in its infancy, gains momentum.

VI

I have been trying to show, with a few examples, at which points and in what ways the study of Greek legal history can help us in our efforts to gain a deeper insight into the workings and the function of law in general. I could expand this survey indefinitely, referring to a variety of problems of a more general character that might even arouse the interest of the nonspecialist. This would be particularly true, I think, of certain areas of both substantive and adjective law in which

the Greek approach shows a remarkable similarity to early English law. I mentioned the Greek concept of contractual liability, and I should like to add that it is in some ways comparable, if I am not mistaken, to the idea underlying the action of trespass on the case. Unfortunately there is no time now to elaborate.¹⁷ If I have succeeded in convincing some of you that research into the history of Greek law can be conducted in a way that entitles it to a place among the various *legal sciences*, I have reached my goal.

17. See Wolff, *Debt and Assumpsit in the Light of Comparative Legal History*, 1 *THE IRISH JURIST* 316 (1966), reprinted in H.J. WOLFF, *OPUSCULA DISPERSA* 123-34 (1974).