Comparative Law: Ancient Law
Fall 2016
Thurs.-Fri. 10-11:30
Hauser Hall rm. 102

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Office hours: Fridays 12-2. There is a link to a sign-up sheet on my HLS website. Sign up for a slot by 5pm on Thursday for the following day’s office hours.

General:
This course examines topics in ancient law of interest to modern lawyers, including ancient approaches to crime and punishment, the regulation of sexuality (rape, adultery, prostitution, homosexuality), constitutional law, the trial jury, court procedure, international law, and commercial law. The focus will be on the legal systems of classical Athens and Rome. We will also look at other ancient legal systems where relevant to a particular topic. The broader goal will be to explore the role of law in a democratic society.

Prior knowledge of ancient history or ancient languages is not required; all readings are in translation and the course is designed to be of interest to those without a background in the ancient world. The focus of the class will be on comparing various ancient and modern approaches to problems faced by all legal systems.

Readings and Handouts:
The required text is Carey, Trials from Classical Athens (2nd Edition), which should be available at the coop. Two additional required readings-- Aeschylus, Eumenides, and Brickhouse & Smith, The Trial and Execution of Socrates —are on reserve in the library, and can be purchased from amazon or ordered from the COOP if you would like to own them (any translation of Aeschylus will do for our purposes). Xeroxed materials will be provided in installments at the copy center. Copies of all class handouts will be posted on the course website.

Requirements:
Grades will be based on 2 short response papers, each 2-3 double-spaced pages in length, a 1-hour in class exam, and class participation.

Responses: (50%) Students may choose to respond to any 2 reading assignments. Responses may focus on part or all of one day’s reading assignment or may compare one reading with a previous reading. Responses may also involve writing the missing opposing speech to a court speech we have read. Responses must be uploaded into the dropbox on the course website by 9pm on the evening before the main reading(s) examined in the paper is to be discussed in class.
Exam: (35%) The 1-hour in-class, open-book exam will consist of short passages from the course readings. You will be expected to choose a selection of passages (e.g. choose any 4 of 5) and discuss the significance of each passage in 500 words or less.

Class Participation: (15%) We will use a rotating panel system. If you cannot attend or cannot be prepared on a day you are on call, email my assistant ahead of time and I will reassign you to another day.

Mock Trial: We will hold a mock trial of an Athenian court case near the end of the semester. A small number of students may volunteer to participate as speakers or magistrates; the rest of the class will serve as the jury. Students who deliver speeches for the mock trial may submit their speech as one of their response papers.

Paper plus writing credit option: Students may also elect to write a 15-20 page paper for one additional writing credit. Students writing papers do not need to write the response papers, but do need to take the exam. Paper topics must be approved by me. For students who are unsure of a topic, I suggest comparing ancient and modern approaches to a particular legal doctrine or area of law.

Writing requirement Option: Students looking to satisfy the law school writing requirement who do not want to write a research paper may write 3 additional short response papers (5 total) to satisfy Option 2.ii (“substantial course writing”) of the writing requirement.

Readings and Class Schedule:

(“Cases” can be found in Carey, Trials from Classical Athens; “CP” refers to photocopied materials available at the copy center and on the course website in installments. I will update the syllabus with more specific reading assignments as we get to each installment).

NB: The dates below are estimates of what we will cover each day; I will adjust the timing of the assignments based on our progress.

Course Introduction

September 8:

Reading for discussion: Case VI (Demosthenes 54-Against Konon for Battery). Reprinted in CP pp. 1-12. Please be ready to discuss this case during the first class.

Background reading (don’t sweat the details):
Hansen, “The Athenian Constitution down to 403 B.C.: A Historical Sketch” (CP pp. 22-30)
Borkowski & DuPlessis, “Introduction: Rome—A historical sketch” (CP pp. 31-54)
Unit I: Law Collections and Archaic Procedure

September 9:

Laws of Ur-Namma: Intro and Prologue, ¶ 1-2 (CP 55-57)
Laws of Eshmunna: Intro and Superscription (CP 60-61)
Laws of Hammurabi: Prologue, Epilogue (CP 67-68; 84-86). Skim entire code (CP 67-86)
Gortyn Law Code: Col. I, II, XI, XII (CP 87-88; 93-94)
Twelve Tables: (CP 95-97)

September 15: Archaic Greek Procedure

CP 98-105 (excerpts from Homer, Hesiod, Herodotus, and Draco’s Homicide Law)

Unit II: Court Procedure and Personnel; Sources and Notions of Law

September 16: Athenian Litigation

Demosthenes 21, Against Meidias CP 109-182

Background reading:
Carey, Trials From Classical Athens, Introduction (pp. 1-22)

September 22: Athenian Litigation (ctn)

Demosthenes 53, Against Nicostratus CP 183-187
Case XIX in Carey (not in CP): Lysias 10- Against Theomnestos
Lycurgus, Against Leocrates CP 188-210

September 23: Roman litigation; Roman criminal procedure

Excerpts from Valerius Maximus, “About Important Civil Trials” CP 211-212
D. 22.5 (Rules of Evidence) CP 213
Roman Litigation in Johnston, Roman Law in Context CP 214-224
Correspondence of Pliny and Trajan on Christians CP 225-226
Martyrdom of Pionius CP 227-234
The Framework of Criminal Procedure in
Robinson, The Criminal Law of Ancient Rome CP 235-242
Cicero, Pro Milone CP 243-263

Unit I Part II: Law Collections and Archaic Law

September 29: Homicide in Ancient Near Eastern and Biblical Law
Visiting speaker: Pamela Barmash

Unit III: Citizenship/Status/Sexuality, Family Law, and the Regulation of Sex

September 30 Citizenship and Slavery

Case XVII: Demosthenes 57 (Reply to Euboulides)
Athenian inscription on slave sale CP 264
Lead letter from Athenian Agora CP 265
Aristotle on natural slavery CP 266-267
Old Oligarch on slaves in Athens CP 268-269
Short excerpt from Demosthenes 47 CP 270-274
Lysias 23, Against Pancleon CP 275-278
Digest excerpt on suits for freedom in Rome: 40.12.30, 33,39, 40,41 CP 279
Excerpt on slavery and citizenship in Roman law CP 280-291
Gaius, Institutes on slavery (don’t sweat the details) CP 292-295

October 6: The Position of Women

Fragments from an Athenian abortion trial CP 296-297
Case VIII: Lysias 32 (Against Diogeiton)
Excerpt on Legal and Social Status of Women in Athens CP 298-302
Excerpt on Family and Inheritance Law in Rome CP 303-310
Roman cases on the position of women CP 311-315

October 7: Roman Family Law
Visiting Speaker: Bruce Frier

Readings TBA

October 13: Homosexuality and Prostitution

Case XV: Aeschines 1, Against Timarchus
Case XVI: [Demosthenes] 59 (Against Neaira)

October 14: Self-Help and Sexual Offenses

Case I: Lysias 1 (On the killing of Eratosthenes)
Robinson on sexual offenses in Rome CP 316-321
Cases on adultery in Rome CP 322-326
Excerpts from Demosthenes 47, Against Evergus and Mnesibulus CP 327-345
Callistratus on Marcianus before Marcus Aurelius CP 346

October 20: Law and Drama
Visiting Speaker: Victor Bers, Yale
Aeschylus, *Eumenides* (in Aeschylus’ *Oresteia*, which is on reserve, and available at other libraries and square bookstores)

October 21: Sex crimes in Ancient Rome  
Visiting Speaker: Thomas McGinn, Vanderbilt

Readings TBA

**Unit IV: Crime and Punishment**

October 27: Murder Mysteries

Case III: Antiphon 5 (*On the Killing of Herodes*)  
Cicero, *Pro Roscio Amerino*

October 28: Homicide, Wounding, and Self-Defense

Case II: Antiphon 1 (*Accusation of poisoning against the stepmother*)  
Case IV: Antiphon 6 (*On the chorister*)  
Case V: Lysias 3 (*Reply to Simon, a defence*)

November 3: Law in Ancient China

Visiting speaker: Michael Puett

November 4: Punishment; Transitional Justice; International Law

Reread Laws of Ur-Namma ¶¶1-7, 18-22; Laws of Eshnunna ¶¶ 42-48; Laws of Hammurabi 6,8,22-24, 195-214 (in Course Packet I)  
Excerpts from Plato, *Protagoras*, *Laws*  
Excerpt from Thucydides (Mytilenian debate)  
Debate on Roman punishments in Aulus Gellius’ *Attic Nights*  
Ar., *Constitution of the Athenians* on the Thirty  
Xenophon, *Hellenica* (on the Thirty)  
Lysias 26 (*Euandrus*)  
Thucydides, Melian Dialogue  
“Laws of War in Ancient Greece”  
Excerpt from Bederman on Just War in Rome

November 10: Contracts in Biblical and Near Eastern Law

Visiting Speaker: Peter Machinist
Unit IV “Constitutionalism” and Public Law

Nov. 11: “Founders,” The Athenian and Roman “Constitutions”

Plutarch, Solon excerpts
[Ar.] Constitution of the Athenians, excerpts on Solon and constitution
Herodotus, Histories 3.80-82
Aristotle on Collective Wisdom (Politics)
Thucydides excerpts (II.65 and Syracuse debate)
Lanni & Vermeule on ostracism and graphe paranomon
Brennan, Outline of Roman Republican Constitutions
Lintott, on Republican Assembly Procedure
Polybius on the mixed Constitution
Athenian laws on treason
Lintott, on the “Last Decree” and the “Dictatorship”
Livy on Cincinnatus

November 17: Regulation of Speech and Religion

Excerpts from Euripides, Suppliant Women
Pericles’ Funeral Oration
Plato, Apology
Xenophon, Apology
Description of the banishment of Ovid
Excerpts on Theoris of Lemnos and Phryne
Excerpts on the Bacchanalian Affair: Livy 39. 8-19; Bruttium Inscription
Excerpts on persecution of Christians

(Plato’s Apology is in Brickhouse and Smith, The Trial and Execution of Socrates, which is on reserve, and is also available in multiple translations in various Harvard libraries and square bookstores)

Unit VIII: Contracts and Commercial Law

November 18: Contracts, commercial law, and the Roman Economy
Visiting speaker: Dennis Kehoe, Tulane

Readings TBA

Dec. 1: Mock Trial of Socrates

Dec. 2 Contracts and commercial law in Athens

Lysias 22, Against the Retailers of Grain ??
Demosthenes 56, Against Dionysodorus
Case XII: Hyperides (Against Athenogenes)
Excerpts from Crook, *Law and Life of Rome*

**Supplementary Materials on Reserve:**

The required reading for the course consists mostly of primary sources. The class lectures and discussions should provide sufficient context for the readings, but if you would like more background information, feel free to consult the books below, which are on reserve in the library. For a basic overview of a topic in Athenian law, consult Todd, *The Shape of Athenian Law* or MacDowell, *The Law of Classical Athens*. For Roman law, look at Nicholas, *An Introduction to Roman Law*; Borkowski & du Plessis, *Textbook on Roman Law*; Johnston, *Roman Law in Context*, or Riggsby, *Roman Law and the Legal World of the Romans*.

**Near Eastern and Biblical Law:**
R. Westbrook, *A History of Ancient Near Eastern Law*
P. Barmash, *Homicide in the Biblical World*

**Greek Law:**

D. Bederman, *International Law in Antiquity*
T. Brickhouse & Smith, *The Trial and Execution of Socrates*
M.R. Christ, *The Litigious Athenian*
D. Cohen, *Law, Sexuality and Society: The Enforcement of Morals in Classical Athens*

________. *Law, Violence and Community in Classical Athens*
M. Gagarin, *Dracon and Early Athenian Homicide Law*
Gagarin, *Writing Greek Law*
M. Gagarin & D. Cohen, *The Cambridge Companion to Ancient Greek Law*
M. Hansen, *The Athenian Democracy in the Age of Demosthenes*
V. Hunter, *Policing Athens*
S. Johnstone, *Disputes and Democracy: The Consequences of Litigation in Ancient Athens*
Lanni, *Law and Justice in the Courts of Classical Athens*
Lanni, *Law and Order in Ancient Athens*
D. MacDowell, *The Law in Classical Athens*

________, *Athenian Homicide Law*

________, *Spartan Law*
Sinclair, *Democracy and Participation in Athens*
I.F. Stone, *The Trial of Socrates*
S.C. Todd, *The Shape of Athenian Law*
V. Wohl, *Law’s Cosmos*

**Roman Law:**
Borkowski & du Plessis, *Textbook on Roman Law*
J.A. Crook, *Law and Life of Rome, 90 B.C.-A.D. 212*
Flower, ed, *The Cambridge Companion to the Roman Republic*
B. Frier, *Rise of the Roman Jurists*
B. Frier, *Landlords and Tenants in Rome*
Harries, *Law and Crime in the Roman World*
D. Johnston, *Roman Law in Context*
Kunkel, *An Introduction to Roman Legal and Constitutional History*
Lintott, *The Constitution of the Roman Republic*
B. Nicholas, *An Introduction to Roman Law*
T. McGinn, *Prostitution, Sexuality, and Law in Ancient Rome*
Nippel, *Public Order in Ancient Rome*
Riggsby, *Crime and Community in Ciceronian Rome*
Riggsby, *Roman Law and the Legal World of the Romans*
Rosenstein & Morstein-Marx, *A Companion to the Roman Republic*
O.F. Robinson, *The Criminal Law in Ancient Rome*
Watson, *The Spirit of Roman Law*
Watson, *Law Making in the Later Roman Republic*
H.J. Wolff, *Roman Law: An Historical Introduction*