

Law and Literature in Ancient Greece

International Studies in Law and Literature

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Law and Literature in Ancient Greece

By

Martín Laclau

Translated by

Deirdre B. Jerry



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Introduction to the *International Studies in Law and Literature*

It is my pleasure, as editor-in-chief, to introduce this new series on law and literature from the prestigious Brill | Nijhoff publishing house. However, I cannot do so without first mentioning the person who launched this initiative, Lindy Melman, whose brilliant forty-year career in publishing, finally as a Brill editor, was recently celebrated in a tribute publication, *Reflections on International Law. Studies in Honour of Lindy Melman*, edited by Tim McCormack. I would also like to mention her successor in this task at Brill, fellow editor Bea Timmer, who has diligently labored to continue her precursor's work and release the first volumes of this series.

When, in the summer of 2021, Lindy asked if I would like to be involved in launching a new series on law and literature, my response was an immediate and enthusiastic yes. I then joined the Editorial Board, which, as observant readers will have noticed, is made up of some of the most internationally respected representatives of this movement, including the man generally acknowledged as its founder, the American professor James Boyd White. The star-studded cast also includes Richard Weisberg (USA), François Ost (Belgium), Carla Faralli (Italy), M. Paola Mittica (Italy), Jeanne Gaakeer (Netherlands), Alfredo Montoya Melgar (Spain), Luis Martí Mingarro (Spain), Martín Laclau (Argentina), Marco Wan (Hong Kong), Shaun McVeigh (Australia), Maret Leiboff (Australia), Frode Helmich Pedersen (Norway) and Helena Whalen-Bridge (Singapore).

The initial idea was to print one or two volumes a year, each with an average length of between 80,000 and 100,000 words. The aim of this editorial project was to publish an international series of outstanding, first-rate manuscripts (monographs and collections) in English by scholars from around the world on the topic of law and literature in the broadest sense of the term. Its scope includes subjects such as the law "of" literature (authors' rights, intellectual property, copyright; censorship and pornography; defamation, libel, sedition, or racism in the press; freedom of speech); the law "in" literature (the law in literary works and authors); the law "as" literature (questions of interpretation, rhetoric, and hermeneutics); and law and film.

The first installment of the *International Studies in Law and Literature*, by the prestigious Professor Martín Laclau, from Universidad de El Salvador in Buenos Aires, is titled *Law and Literature in Ancient Greece*. This volume is an English translation, by Deirdre B. Jerry, of the original Spanish version, *La*

comprensión del derecho en la antigua Grecia, published in 2022 by Editorial Astrea as part of its “Filosofía y Derecho” series.

Martín Laclau was born in the city of Buenos Aires in 1938. He studied law at the School of Law and Social Sciences of the Universidad de Buenos Aires, and philosophy in the Department of Philosophy and Literature at the same university. In addition to holding a university chair, he served as a justice of the Cámara Federal de la Seguridad Social [a federal court of appeals in Argentina]. He is currently an emeritus professor of Universidad de El Salvador. Laclau is a member of the Argentine Association of Comparative Law, the Argentine Association of the Philosophy of Law, and the History of Law Research Institute, among other organizations, as well as a founding member of the Argentine Ethics Association.

Regarding his publishing activity, Professor Laclau is editor of the *Anuario de Filosofía Jurídica y Social*, published by Abeledo-Perrot, with over forty issues printed since its founding. He has also authored approximately ten books on legal theory and legal philosophy and over one hundred articles in Spanish, several of which have been translated into English, Portuguese, and Italian. He has given countless lectures, organized innumerable courses and seminars, and participated in many national and international conferences.

This book, which I have the privilege of introducing to readers, begins with a fascinating chapter on the notion of natural law in Greece and its introduction in Western legal thought, and continues with examinations of the concepts of *dike* and *nomos* in Hesiod’s poems and of justice and cosmos in Anaximander’s philosophy. Two particularly brilliant chapters are dedicated to the themes of justice and guilt in Aeschylus’s plays, and to an analysis of a classic figure in the field of law and literature, Antigone, and the clash between the positive law decrees of King Creon and the natural law defended by the heroine in the matter of whether or not her brother should receive proper burial. Professor Laclau’s erudition shines through just as brightly in his discussions of the understanding of history in Herodotus and philosophy and politics in Thucydides’s conception of history. The last two chapters, devoted to language and reality in Aristotle and the systematic nature of scientific knowledge according to this Greek philosopher, tie the book together and provide the perfect conclusion.

One of the most salient characteristics of this magnum opus by Martín Laclau—a quality that permeates every line, making it a unique and immensely valuable contribution—is the depth of his analysis, an unerring instinct for penetrating to the heart of every subject he addresses, something that only a person with an intimate knowledge of both philosophy and the law can achieve. Of course, this admirable ability is enhanced by his consistently eloquent, refined style, his expert handling of sources, and his impeccable

scholarship. I wholeheartedly recommend this work to anyone with an interest in learning more about the classical world.

It is fitting that one of the first titles in a series dedicated to law and literature should be about the ancient world. I am tremendously grateful to Martín Laclau, who is also on the Editorial Board of the *International Studies in Law and Literature*, for his unconditional support of this publishing project at every step of the way. I have known and maintained an academic relationship with Professor Laclau for many years, in Buenos Aires and in Madrid, and I can honestly say that it is both a pleasure and an honor to include this English translation of his work in the series. Thanks to this volume I am convinced that many new audiences in the English-speaking world will benefit enormously from his insights, hitherto available mainly to Spanish readers. Finally, I would like to invite academics interested in having their work published as part of this series to send us their original manuscripts for consideration.

Madrid, July 1, 2023

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Preface

The essays compiled in this volume represent different attempts to comprehend the idea of the law that gradually took shape in Greece, which was undeniably instrumental in the subsequent development of our Western civilization. I believe that an examination of this subject is unquestionably relevant to the legal scholarship of our time, not only because Greek concepts were used by Roman jurists when trying to come up with a theoretical framework for their institutions, but also because a deeper knowledge of this theme can be a powerful means of combating the increasing specialization of our field—a trend which deprives the law of a holistic perspective that ultimately gives the entire discipline meaning.

Everyone shapes their own world and, in the process, establishes their personality. However, over-specialization today is inexorably widening the gap between our specific knowledge and the innately human drive that led us to acquire it in the first place. The result is a predominance of diverse techniques which, as a whole, have severed their ties to the original knowledge on which they are predicated. The pursuit of practical success has displaced the search for truth, and this situation undoubtedly facilitates the massification of ideas and behaviors, the result of which is the growing dehumanization of the individual.

The world of culture is the work of human hands, but that world rests on and stems from human personality. We cannot comprehend cultural products of any kind if we forget from whence they came. We must step out of the world of scholarship and return to the world of life, retrieve the notes of that world, and use them to infuse our knowledge with renewed vitality. In the specific case of the law, court litigators, driven by practical necessities, will often ignore the guiding principles of legal science, and on many occasions even scholars will set aside the philosophical foundations of their discipline. But this situation can be remedied by cultivating the “human sciences” or humanities, fundamentally philosophy, history, and literature. These three paths introduce us to the study and comprehension of human nature and, by extension, of the various bodies of knowledge which have their source in that nature.

Ancient Greece is a textbook case for, as André Malraux pointed out, a secret Greece lives in the heart of every western man. It was there, for the first time, that people wondered about the existence of things and laid the first stones of our civilization; and it was there that this primary quest for truth led to the subsequent quest for freedom and justice. The problems of that age were similar in substance, if not in form, to the ones we face today. And this is what compelled me to share the following pages with my readers.

Buenos Aires

June 1, 2021