

TABLE OF CONTENTS

A Note on the Authors	XI
General Editor's Preface to the Historical Volumes of the Treatise <i>(by Enrico Pattaro)</i>	XV
Preface by the Editors of Volume 6 <i>(by Fred D. Miller, Jr., and Carrie-Ann Biondi)</i>	XIX
Abbreviations	XXI
Prologue - Near Eastern Antecedents of Western Legal Thought <i>(by Fred D. Miller, Jr.)</i>	1
Further Reading	5
Chapter 1 - Early Greek Legal Thought <i>(by Michael Gagarin and Paul Woodruff)</i>	7
1.1. Law and Legal Procedure in Early Greece	7
1.2. The Emergence of Written Laws	11
1.3. Law in the Classical City	15
1.4. The Concept of Law	19
1.4.1. <i>Way of Life</i>	20
1.4.2. <i>Conventional Opinion</i>	21
1.4.3. <i>Compounds</i>	22
1.4.4. <i>Statutes</i>	22
1.5. The Origin of Law	23
1.5.1. <i>Gift of the Gods</i>	23
1.5.2. <i>Human Invention or Agreement</i>	24
1.5.3. <i>Nature</i>	26
1.6. The Functions of Law	28
1.6.1. <i>Laws of the Polis</i>	28
1.6.2. <i>Unwritten Law</i>	30
1.6.3. <i>The Law of the Greeks</i>	30
1.6.4. <i>The Law of Nations: Universal Law</i>	31
1.7. Conclusion	32
Further Reading	33

Chapter 2 - Socrates and Early Socratic Philosophers of Law*(by Richard F. Stalley and Roderick T. Long)*

35

2.1. The Socratic Movement

35

2.2. Plato's "Trial" Dialogues: *Euthyphro*, *Apology*, *Crito*

37

2.3. Xenophon

43

2.4. Cyrenaics and Cynics

51

Further Reading

56

Chapter 3 - Platonic Philosophy of Law*(by Richard F. Stalley)*

57

3.1. Introduction

57

3.2. Plato's Critique of the Sophists: *Protagoras* and *Gorgias*

58

3.3. The Philosophy of Law in Plato's *Republic*

61

3.4. Law in Plato's *Statesman*

66

3.5. Plato's *Laws*

68

3.6. Plato on Punishment

74

Further Reading

76

Chapter 4 - Aristotle's Philosophy of Law*(by Fred D. Miller, Jr.)*

79

4.1. Life and Writings of Aristotle

79

4.2. Overview of Aristotle's Concept of Law

80

4.3. Legislative Science

85

4.4. Justice and Law

90

4.5. Natural Law

94

4.6. Legal Justice and Natural Justice

95

4.7. The Rule of Law and Legal Change

99

4.8. Ancient Greek Conceptions of Rights

102

4.8.1. *Just Claim* (to dikaion)

103

4.8.2. *Liberty or Privilege* (exeinai)

105

4.8.3. *Authority* (kurios)

106

4.8.4. *Immunity* (adeia) and *Exemption* (ateleia)

107

Further Reading

109

Chapter 5 - Hellenistic Philosophers of Law*(by Roderick T. Long)*

111

5.1. The Hellenistic Era: A New Political Context for Legal Thought

111

5.2. Academics

114

5.3. Peripatetics

118

5.4. Polybius

121

5.5. Epicureans	122
5.6. Stoics	127
Further Reading	131
Chapter 6 - Law in Roman Philosophy	
(by Brad Inwood and Fred D. Miller, Jr.)	133
6.1. Historical Overview of Roman Law and Legal Thought	133
6.2. Cicero	140
6.3. Seneca	147
6.4. Epictetus	153
6.5. Marcus Aurelius	155
6.6. Ancient Roman Conceptions of Rights	157
Further Reading	163
Chapter 7 - Early Jewish and Christian Legal Thought	
(by Fred D. Miller, Jr.)	167
7.1. Historical Overview of Ancient Jewish Legal Thought	167
7.2. Paul on Christianity and the Law	174
7.3. Early Christian Legal Thinkers	180
Further Reading	184
Chapter 8 - The Philosophy of Law in the Writings of Augustine	
(by Janet Coleman)	187
8.1. Life and Writings of Augustine	187
8.2. Augustinian Ethics	190
8.3. Augustine on Law and Order	196
8.4. Augustine the Roman in His Times	198
8.5. Contemporary Roman Law and Augustine	201
8.6. Augustine on Roman History and the Lessons for Politics	208
8.7. Conclusion	217
Further Reading	218
Chapter 9 - Philosophy of Law in Medieval Judaism and Islam	
(by Charles E. Butterworth)	219
9.1. Introduction	219
9.2. Law and Revelation in the Prophetic Religions	221
9.3. Alfarabi	226
9.4. Avicenna	238
9.5. Averroes	242

9.6. Maimonides	246
9.7. Conclusion	249
Further Reading	249

Chapter 10 - The Revival of Roman Law and Canon Law

(by Thomas M. Banchich, John Marenbon, and Charles J. Reid, Jr.)	251
10.1. The <i>Digest</i> of the Emperor Justinian	251
10.2. The Varieties of Medieval Law	254
10.3. The Revival of Roman Law	256
10.4. Theoretical Foundations of Canon Law: Gratian's <i>Decretum</i>	257
10.5. Medieval Canon Law and Rights	259
Further Reading	264

Chapter 11 - The Rise of Scholastic Legal Philosophy

(by John Marenbon)	267
11.1. Intellectual Sources of the Scholastic Tradition	267
11.1.1. <i>The Main Sources for Philosophy and Theology: A Sketch</i>	267
11.1.2. <i>Sources for the Philosophy of Law</i>	269
11.2. John Scottus Eriugena and the Idea of Law	269
11.3. Abelard on Law and Punishment	270
11.3.1. <i>Abelard and His Theological Project</i>	270
11.3.2. <i>Natural Law, Old Law, and New Law</i>	271
11.3.3. <i>Positive Law</i>	274
11.3.4. <i>A Theory of Punishment</i>	276
11.3.5. <i>Abelard and Canon Law</i>	277
11.4. Natural Law in Early Scholasticism: William of Auxerre	278
11.4.1. <i>The Background in Canon Law</i>	278
11.4.2. <i>William of Auxerre's Summa Aurea (Golden Textbook)</i>	278
11.5. Legal Conceptions of Early Scholastics: The <i>Summa Fratris Alexandri</i>	281
11.6. Conclusion	282
Further Reading	283

Chapter 12 - The Philosophy of Law of Thomas Aquinas

(by Anthony J. Lisska)	285
12.1. Life and Work	285
12.2. The Treatise on Law	288
12.3. Eternal Law	288
12.4. The Natural Law	291
12.5. Human or Positive Law	299
12.6. Divine Law	301

12.7. Punishment	304
12.8. The Virtue of Justice	305
Further Reading	309
Chapter 13 - Philosophy of Law in the Later Middle Ages	
(by Anthony J. Lisska and Brian Tierney)	311
13.1. Roger Bacon and John Duns Scotus	311
13.2. John of Paris and Marsilius of Padua	316
13.3. William of Ockham on Law	321
13.4. Ockham and Natural Rights	325
13.5. The Beginning Stages of Absolutism	329
13.6. Conclusion	330
Further Reading	332
Chapter 14 - Later Scholastic Philosophy of Law	
(by Annabel Brett)	335
14.1. Introduction	335
14.2. Dominican Scholastics: Francisco De Vitoria and Domingo De Soto	340
14.2.1. <i>Natural Reason and Political Resonance</i>	341
14.2.2. <i>Reason, Will, and Obligation</i>	344
14.2.3. <i>Reason and Natural Law</i>	348
14.2.4. <i>Human Law: The Law of Nations</i>	351
14.2.5. <i>Human Law: Civil and Ecclesiastical Law</i>	356
14.3. Jesuit Scholastics: Francisco Suárez, Gabriel Vázquez, and Juan De Salas	359
14.3.1. <i>Reason, Will, and Legal Obligation</i>	360
14.3.2. <i>Human Law and the Law of Nations</i>	367
14.3.3. <i>Human Law: Civil and Ecclesiastical Law</i>	369
14.4. Conclusion	373
Further Reading	374
Epilogue - The Legacy of Ancient and Medieval Legal Thought for Modern Legal Philosophy	
(by Carrie-Ann Biondi)	377
Further Reading	382
Bibliography	
(compiled with the assistance of Mahesh Ananth)	385
Index of Subjects	427
Index of Names	439