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**The Genesis, Development and Application
Of Ancient Greek Laws**

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THE GENESIS, DEVELOPMENT AND APPLICATION OF ANCIENT GREEK LAWS AND CODES TO THE MODERN SYSTEMS OF JUSTICE IN WESTERN DEMOCRACIES AND THE CITATION AND REFERENCE TO ANCIENT GREEK LAW IN THE COURTS OF THE EUROPEAN UNION

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I. PROLOGUE: THE HELLENIC SEED

There is a word in Greek: ἀρχή that the ancient philosophers used with deliberate double meaning.

In its simplest form it means a beginning.

The point from which something proceeds, however, Anaximenes of Miletus, one of the earliest thinkers of the Western philosophical tradition, gave it a second, deeper sense.

The thinker used ἀρχή to mean a governing principle or something that does not merely precede all else in time but underlies all else in nature, giving shape and coherence to everything that follows.

To illustrate, a beginning that is also, perpetually like the universe, representing a defining principle.

It is in that dual sense that I am permitted by the licence of my culture to adopt the word Hellenic here.

For the law of the ancient Greeks is not simply an historical curiosity it is an interesting episode in time from twenty-five centuries ago that we have since outgrown.

It is an ἀρχή in Anaximenes' sense to commence something that underlies the entire legal architecture of Western civilisation, giving coherence to institutions and doctrines that modern practitioners often assume to be self-evidently modern.

From the proportionality principle that sits at the heart of European Union jurisprudence, to the rule of law that animates every constitutional democracy, to the excitement of an adversarial trial, the right to be heard, the public accountability of judges, and the irreducible dignity of the individual before the court glorified in the roots that reach back to Athens.

I come to this subject not only as a judge of the Supreme Court of Papua New Guinea, but as a son of the Greek Orthodox tradition, a descendant of a people whose wartime resistance and whose philosophical inheritance have shaped my understanding of what courts are for and why the systems of justice exist.

In researching this presentation the inspiration was powered by something deeply personal in tracing the line from Solon's reforms in 594 BCE to the courtroom in Tari, Hela Province, where I sit as Resident Judge in a jurisdiction that was closed for seven years by tribal conflict before I was appointed to reopen it despite the trepidations by my caring eldest judicial brother the Chief Justice of PNG, Justice Salika.

When I speak of justice arriving where it has been absent, I speak in an ancient language amplified with the language of δίκη, the Greek word that means both a legal claim and justice itself, and which, in the mythology of the ancient world, was

also a goddess, the daughter of Zeus, who was the keeper of the eternal order in a mythological world of the Gods of Olympus governed by male supreme beings.

In order for this presentation to succeed and trace the genesis, development, and application of ancient Greek laws and codes to the modern systems of justice in Western democracies it requires patient and insight.

It does so in eight movements, from the world before written law through to the great lawgivers, weaving into the fabric the philosophy that outlasted every specific statute, lent to the Roman and Byzantine in a transmission of hope, lighting the flint for the Enlightenment, to the living and active citations of Greek principles in the courts of the Commonwealth and the European Union presently.

It is written for a sophisticated audience that understands the law, feels the pull of Hellenic heritage, and is capable of appreciating both the intellectual rigour of the argument and the passion that drives it as a characteristic of the hopeful Philhellenes.

To borrow a phrase from the Greek Orthodox liturgy that echoes through all serious Hellenic endeavours and through every court session I have opened in the highlands of Papua New Guinea let us begin (*Πάμε [pame] lets go*)

II. THE WORLD BEFORE WRITTEN LAW: BLOOD, CUSTOM, AND THE HUNGER FOR NOMOS

To understand what the ancient Greeks achieved in law, one must first understand what they replaced.

Before the great codifications of the seventh and sixth centuries BCE, the Greek world suffered like every pre-literate society, primarily governed by a combination of custom, social pressure, religious prohibition, and the naked authority of the powerful or those connected to the powerful.

Disputes between individuals were resolved not by an impartial tribunal applying a known standard, but by the strength of family, the weight of personal connection, and the willingness of the stronger party to accept a settlement.

Where that willingness was absent, blood feuds were triggered from a lack of insight in the cycle of private retributive violence as the only default mechanism of derivative justice.

This is not, it must be said, a uniquely ancient problem.

In my own experience as Resident Judge of Hela Province representing a jurisdiction that closed its courts for seven years because tribal conflict rendered the administration of justice impossible and even the local national judges feared to tread, I have witnessed at close quarters what the absence of accessible or impartial law actually looks like.

It shapes itself as the necessary vendetta.

It resembles the suppression of women and children whose suffering attracts no advocate shadowed by the powerful moving with impunity while the powerless have no recourse.

The ancient Athenians who hungered for Solon's reforms in 594 BCE were not so vastly different from the communities of the Southern Highlands who today view the courts as something novel and strange where there is an expectation that the courtroom is a strange place where even the weak have rights or may speak, and be heard.

The Greek world of the eighth and seventh centuries BCE possessed what scholars call a pre-legal order, relevantly, an intricate web of obligations governed by the concept of τιμή (timē translated to honour and its public recognition), φιλία (philia defining the bonds of loyalty and affection between kin and allies), and the retributive expectations of the ὀργή (orgē which is the blistering anger that must be satisfied when honour is violated).

These were not trivial mechanisms. They maintained social cohesion in a world of competing city-states, each a small polity governing its own affairs.

The processes were also profoundly unstable absent stare decisis to ensure past laws presented certainty.

Honour codes are, by their nature, susceptible to escalation.

A slight or allegation demands a response where the response demands a counter-response then the earthquake of the blood feud erupts into the vendetta and then spreads and perpetuates itself across generations until one family is extinguished or a compromise is brokered by a third party of sufficient standing.

The great movement for legal codification that swept the Greek world from the seventh century BCE onward was, at its core, a response to this instability.

It was the recognition, articulated with increasing philosophical sophistication, that a community governed by private vengeance is no community at all inviting δίκη (dikē), justice, to be public, predictable, and accessible to all citizens, not merely to those with the muscle to enforce their claims.

The word δίκη itself carries this meaning in concentrated form translated to the right way, the lawful path, the claim that can be brought before a tribunal, but it is also the cosmic principle of rightness that Hesiod, writing around 700 BCE, placed at the foundation of the universe itself as a lighthouse of honour where darkness is created by injustice.

What made the Greek codification movement historically decisive was not merely that laws were written down as other ancient peoples had done that before but that those laws were written for the community, inscribed on stone stelae in the public agora, visible to every citizen, binding upon magistrates and kings alike.

The marketing or publicity of law was the required principle that the citizen may know in advance what the law demands of that citizen and not merely an administrative convenience.

It is the foundational precondition of individual liberty flowing in a direct and traceable line from the stone walls of Gortyn in Crete, where the great law code of the fifth century BCE survives to the present, to Article 7 of the European Convention on Human Rights, which enshrines the principle *nullum crimen sine lege* ("no crime without law") in the constitutional architecture of every signatory state.

III. THE LAWGIVERS: DRACO, SOLON, LYCURGUS, AND THE CODE OF GORTYN

Draco: The Necessity and Brutality of the First Written Code

The first lawgiver whose work is historically attested rather than merely legendary is Draco of Athens, who established his code around 621 BCE.

The ancient sources are unanimous on one point, namely, that the Draconian laws were severe.

Plutarch records the observation that Draco's code was written not in ink but in blood, for it prescribed the death penalty for offences as minor as idleness, and as trivial as the theft of cabbages.

When asked why he had made death the penalty for so many offences, Draco is said to have replied that even small offences deserved death, and for great ones he knew no severer penalty.

The word 'draconian', of course, has entered every modern language as a direct memorial to this approach.

Αμάν Θεέ μου (heaven helps us or oh my God) is the right plea for help - the man was extraordinary.

The ancient sources say that when Demades the orator was asked why Draco wrote his laws in blood rather than ink, he replied that Draco had only one penalty for everything and had simply run out of ideas above death.

When pressed on the cabbage theft point, Draco himself allegedly said he thought death was appropriate for small offences, and for great ones he simply could not think of anything worse.

The word draconian has been in every language ever since remains a permanent memorial to one man's spectacular lack of proportionality, which is itself rather ironic given that proportionality became the greatest Hellenic gift to EU law.

Any attempt to dismiss Draco as a mere brute is to miss the historical significance of what he accomplished.

His primary aim was not cruelty for its own sake. It was the substitution of public law for private vengeance.

Before Draco, the killing of an Athenian citizen was a matter for the dead man's family to resolve through accepted blood money, through the exile of the killer, or through blood feuds.

Draco's homicide laws drew a clear and legally significant distinction between intentional and involuntary killing, assigning different legal consequences to each.

It required and transferred the resolution of homicide from the private sphere of family vendetta to the public sphere of the state. The most important surviving provision of Draco's code was ultimately preserved in a stone inscription dating from its re-enactment in 409 BCE which begins:

"Even if a man not intentionally kills another, he is exiled..."

The single sentence contains, in embryo, the foundational distinction between murder and manslaughter that has governed criminal law in every jurisdiction influenced by the Western legal tradition.

Solon later swept away almost all of Draco's code but retained the homicide statutes intact which speaks to their enduring precision.

The distinction drawn between deliberate and accidental killing was too valuable, too legally sophisticated, to discard.

Solon: The Architect of Civic Justice

If Draco established the principle that law, not vendetta, must govern the community, it was Solon of Athens who gave that principle its democratic content.

Appointed archon in 594 BCE with a mandate to resolve an acute social and economic crisis including a crisis in which the poor were being enslaved for outstanding debts, the landed aristocracy was consolidating power, and the city was on the verge of civil war necessitating Solon to undertake a reform of Athenian law that stands as one of the great acts of statesmanship in human history.

Solon's first act was the *σεισάχθεια* (seisachtheia) which means the '*shaking off of burdens*' by which he cancelled existing debts and freed those who had been enslaved on account of them.

The act was not mere economic policy. It was a legal and philosophical statement to enforce the views of a sophisticated system that the person of the free citizen was not a commodity that could be pledged as security for a debt.

The dignity of the individual was paramount standing above the markets of commerce and the mercantilism who traded within it.

Solon's second achievement was the creation of a new class structure based on productive wealth rather than hereditary birth, opening political participation to those who had previously been excluded by the accident of ancestry.

Solon's third consummation and for the purposes of the presentation being the most significant was the creation of the *Heliaia* (the people's court), in which any Athenian citizen could bring a lawsuit and have it decided by a jury of fellow citizens drawn by lot.

Solon's reforms introduced two principles that have proved indestructible:

First: the right of any citizen to bring a public prosecution (*graphē*) for offences against the community, regardless of whether the prosecuting citizen was personally injured.

This represents the ancestor of the public prosecution systems of every modern democracy.

Second: the right of appeal from a magistrate's decision to a court of citizens at large. This being the right to have one's case heard by a tribunal independent of the executive which is the ancestor of every appellate system in the common law and civil law worlds allowing the right of judicial review of any decision affecting the citizens' rights including the decision of a lower court.

Professor Carleton Stanley, writing in the Canadian Bar Review, made the observation that the Roman Twelve Tables of 450 BCE were modelled on the Athenian Code of Solon of 594 BCE, and that when the Emperor Justinian, twelve centuries later, prefaced his great codification of Roman law known as the **Corpus Juris Civilis** the Emperor deliberately preselected as his preface a quotation from Demosthenes, in the original Greek, on the meaning of law.

The circle of Hellenic influence in the history of Western jurisprudence is therefore made complete from its own first principles.

Lycurgus and the Spartan Counterpoint

There is no account of Greek law that can exclude Sparta, notwithstanding that Sparta offers a fundamentally and uniquely different lesson attributed to the Spartan lawmakers that followed the precedent set by Lycurgus.

The reforms attributed to the legendary lawgiver Lycurgus, whose historical existence is disputed but whose legal legacy is not, in which he created a society governed not by the rule of written law but by the authority of custom, hierarchy, and collective discipline.

Spartan law was never written down, at least not in its early form. Its force came from social pressure, from the *agōgē* dictated by the rigorous state training programme to which every male Spartan citizen was subjected from the age of seven and from the authority of the Gerousia, the council of elders, and the five annually elected ephors who exercised supreme executive and judicial power empowered by the Gods of Olympus and the female soothsayers who foretold future events.

To illustrate, the name of the female virgin who advised the Spartan ephors of the future was Cynisca of Sparta. She was a Spartan royal princess and the first female Olympic champion, known for her victories in the chariot races at the Olympic Games.

Cynisca's achievements challenged traditional gender norms and inspired future generations of women in ancient Greece particularly in ancient Sparta when women would govern ancient Sparta when the Spartan Kings and their warriors were often absent attending to wars to assert their dominance in ancient Greece against other city-states.

The Spartan system is not without modern equivalents.

Almost every military and paramilitary institution in the world owes something to the Spartan understanding that disciplined, collective obedience to a shared code is a precondition of effective organisation.

Sparta's legacy in the history of law is cautionary rather than exemplary.

A legal system that cannot be read, cannot be challenged, and is enforced by social terror rather than public adjudication is not a legal system in the sense that matters to modern jurisprudence.

The helots who were the slave population of Sparta were subjected to an annually renewed declaration of war by the state specifically to make their killing legally permissible who were the most eloquent testimony to what happens when law serves the collective rather than protecting the individual.

The Gortyn Code: The Great Survivor

One of the most remarkable documents in the history of law is the Code of Gortyn, inscribed on a stone wall in the city of Gortyn in Crete in the first half of the fifth century BCE, and still largely readable today.

Covering twelve columns of text running some six hundred lines, it is the most extensive surviving example of ancient Greek law, and it is a document that rewards careful reading.

The Gortyn Code governs civil matters with a sophistication that surprises modern readers who expect ancient law to be primitive.

It addresses the freedom or enslavement of individuals, rape and adultery, women's property rights after divorce or a husband's death, inheritance and division of estates, the legal status of children born to parents of different social classes, adoption, and the obligations of suretyship and debt.

It recognises three social classes, namely the freemen, a middle class of artisans, and slaves.

The categorisation of the social classes applies different legal standards to each, with a fine schedule that starkly reflects the hierarchy.

The Code also contains provisions that protect even the lowest class from arbitrary treatment with the code beginning with the injunction that:

'whosoever may be likely to contend in court about a free man or a slave is not to seize him before trial.'

This initial provision of no seizure before trial is not a procedural technicality.

It is the foundational statement of the rule of law itself, expressed in a formulation that Michael Gagarin, one of the leading modern scholars of Greek legal history, identifies as embodying three core principles including:

- a. the regulation of society by rules rather than by violence.
- b. the principle that no person is above the law, and
- c. the principle that legal decisions must be isolated from extraneous considerations, particularly political ones.

These are precisely the three core criteria that the rule of law embodies in every modern constitutional democracy and in the jurisprudence of the laws of Papua New Guinea enshrined in its national Constitution and in the European Court of Human Rights.

IV. THE ATHENIAN SYSTEM IN OPERATION: DIKASTERIA, AREOPAGUS, AND THE DEMOCRATIC IDEAL

By the fourth century BCE, Athens had developed a legal system of remarkable sophistication despite all its distance from modern democracies in time, is recognisably the ancestor of the adversarial trial, the jury system, the public prosecution and the independence from the executive as an institution, and the institutional separation of the judiciary from executive power and the legislature.

The Architecture of Athenian Justice

The Athenian court system rested on four key institutions.

First, the Areopagus was a council of former archons that met on the Hill of Ares north-west of the Acropolis having the oldest and most solemn jurisdiction, hearing cases of intentional homicide, poisoning, arson, and wounding with intent.

Its antiquity lent it authority with its procedures the most formal and the most ritualistic.

At trial before the Areopagus, both parties swore oaths of the most binding kind with appeals submitting pity or modern day mercy in criminal matters forbidden.

The water clock measured the time each side was permitted to speak as the focus was narrowly on the facts of the killing itself.

Second for the great mass of civil and criminal business, the instrument was the δικάστήριον (dikastērion) known as the people's court.

Each year, six thousand male citizens over the age of thirty volunteered for jury service and were assigned by lot to specific court panels.

Panel sizes varied with the gravity of the matter listing private suits involving modest amounts used juries of 201, larger civil claims required 401 jurors, public prosecutions began at 501 jurors, and finally major political trials could combine panels into groups of 1,001, 1,501, or even 2,501.

The use of the lottery which was the random allocation of jurors to panels was not a matter of administrative convenience. It was a philosophical statement.

The Athenians believed that election to judicial office could favour the wealthy and the well-connected, whereas the lot gave every citizen an equal chance thriving for random selection being more democratic than election.

The Dike and the Graphē: Private and Public Wrong

Athenian law drew a fundamental distinction that lies at the heart of all modern legal systems.

The third was the distinction between wrongs that are primarily injuries to an individual, and the fourth pillar was the wrongs that are injuries to the community itself.

The former were pursued by a δίκη (dikē) which was a private action, brought by the injured party.

The latter were pursued by a γραφή (graphē) as a public prosecution, which any citizen in good standing could bring, regardless of whether he had been personally affected.

The concept that certain wrongs are offences against the entire community and not merely against the immediate victim is not merely the ancestor of the public prosecution systems.

It is the philosophical foundation of the entire idea of criminal law as distinct from tort.

When an Australian or Papua New Guinea prosecutor stands in court and says, '*The State or Crown versus the accused*', the prosecutor is speaking in a tradition that begins with Solon's innovation in 594 BCE which was the recognition that justice is not a private transaction between victim and wrongdoer, but a public good in which every citizen has a stake.

The graphē system also contained a mechanism of particular elegance for discouraging frivolous prosecutions.

A citizen who brought a public prosecution and failed to secure at least one-fifth of the jury's votes faced a fine and a partial loss of the right to bring future public suits which is the present day principle of the court declaring a frequent use of the court by a person with unmeritorious actions as a vexatious litigant to prevent further abuse of the processes of the courts.

The system required the aspiring prosecutor to believe genuinely in his case before bringing it reflecting a discipline that modern jurisdictions enforce through costs orders, abuse of process doctrines, and prosecutorial guidelines, but which the Athenians achieved through the elegant simplicity of a financial penalty for failure.

The Logographer and the Advocate

Athens had no professional advocates in the modern sense as litigants were expected to speak for themselves.

However, the ancestors of counsel were found in a class of professional speechwriters called λογογράφοι (logographoi) who interviewed clients, marshalled evidence, identified the relevant laws, and crafted speeches tailored to the client's age, social position, and rhetorical ability.

The logographer did not appear in court. He armed the client for the battle that the client would fight in person.

The greatest of the logographers were Demosthenes, Lysias, Isocrates who were not merely craftsmen.

They were the first systematic analysts of legal argument mastering the art of how to deploy evidence, how to address the court's sense of justice rather than merely its adherence to the letter of the law, how to tell a persuasive story from the available facts and other tools of modern conventional practice of the law.

The tradition of legal rhetoric that flows from the Athenian courts through the Roman orators, particularly Cicero, to the common law tradition of advocacy is one of the most direct and traceable lines in all of legal history.

The Sentencing Procedure and the Lessons of Socrates

The Athenian procedure for sentencing after conviction known as the τίμησις (timēsis) is worth examining in some detail, because it illustrates both the sophistication and the limitations of the democratic legal mind.

After a verdict of guilty, the prosecution proposed a penalty, and the defence proposed a counter-penalty. The jury then voted to choose one of the two proposals, with no option of compromise.

The effect was to concentrate the minds of both parties as a legal opus with the prosecution that demanded something outrageous risked the jury accepting the defence's milder suggestion and a defence that proposed too little invited the same outcome in reverse.

The most famous demonstration of this system's capacity to produce catastrophic outcomes is the trial of Socrates in 399 BCE, charged with impiety and corrupting the youth of Athens.

After being convicted by a jury of 500, Socrates with extraordinary and perhaps deliberate perverseness initially suggested that his penalty should be free meals at the Prytaneum at public expense, a reward typically given to Olympic champions.

When he eventually proposed a small fine, the jury, insulted, chose the prosecution's demand that the philosopher's punishment should be death by hemlock.

The trial of Socrates haunts Western legal history because it demonstrates that even the most sophisticated democratic system of justice is capable of producing a monstrous injustice when inflamed by political passion.

Athens executed its greatest philosopher for speaking the truth.

The lesson that democracy must be protected from its own worst impulses in that the rule of law must contain mechanisms for protecting the individual against the tyranny of the majority is one that resonates in every modern human rights instruments, and most powerfully in the Constitution of Papua New Guinea and in the European Convention on Human Rights, which was born directly from the experience of what happens when democratic governments abandon the rule of law altogether.

V. THE PHILOSOPHICAL FOUNDATIONS: NOMOS, PHYSIS, AND THE IDEA OF JUSTICE

The most enduring contribution of ancient Greece to the development of law is not any specific statute, nor any particular procedural innovation, but something more fundamental contained in a set of philosophical ideas about what law is, what it is for, and what relationship it bears to ethics and to the nature of things.

These ideas developed by the Sophists and tested by Socrates, then systematised by Plato, and matured into their most durable form by Aristotle constitute the deepest layer of the Western legal tradition, the philosophical substratum upon which every subsequent development rests.

The Sophist Challenge: Nomos Versus Physis

The Sophists of the fifth century BCE posed the question that every legal philosopher must eventually answer.

The Sophists drew a distinction between φύσις (physis) which is nature, the order of things as they simply are and νόμος (nomos) and the law including the conventions that human societies have established for their governance.

The laws, the Sophists argued, are human inventions arrived at by consensus for the purpose of restricting natural freedom in the interest of social cohesion. Codes are

arbitrary. Rules vary between cities. Laws are susceptible to change and there is nothing inherently just about them as they are made by humans and can be easily dissolved or changed by future generations as a mutable code of conduct serving the interests of power.

This is a deeply uncomfortable position, because if it is correct, then the authority of law rests entirely on social agreement.

Social agreement can be manufactured, manipulated, and withdrawn.

Thrasymachus of Chalcedon, in Plato's Republic, stated the most radical version of the Sophist position with brutal directness was that:

"justice, he argued, is simply what is beneficial to the stronger party as it is the name given by the powerful to the arrangements that serve their interests."

The Sophist challenge has never been definitively refuted.

It appears in every era in which legal positivism confronts natural law theory, and most acutely in the aftermath of legal catastrophe like after Nuremberg, where the defence that the average soldiers, and not the commanders, were merely obeying the law of the state they served, failed to protect them from conviction for crimes against humanity.

After apartheid, when the question arose of what obligations citizens, lawyers and judges owed to a legal system that was formally valid but morally abominable remained a paradox of justice leading to a handful of senior judges in South Africa to resign on the grounds that legality and morality were in dire conflict with those opting out electing their morality over the fractured or unworkable rule of law.

The Sophist challenge remains alive and urgent today.

Plato: Law as the Expression of Justice

Plato's response to the Sophist challenge was the theory of Forms.

The argument was that there is an ideal order, accessible to reason though not to the senses, which provides the standard against which human laws may be measured.

In the Republic, Plato argued that a just society required rulers who governed by reason rather than by appetite or ambition exemplifying his famous philosopher-kings and that laws must reflect the demands of the ideal Form of the Good, which is

'beyond being and knowledge, yet the foundation of both.'

For practical purposes, Plato's most significant legal contribution was his insistence on the moral character of law illustrating that his insistence that law is not merely the expression of power or social agreement, but the articulation of values that transcend any particular legislator's will.

In the *Laws*, Plato's final and most practically-minded work, he argued that even an imperfect legal system, applied consistently and accountably, was vastly preferable to rule by the arbitrary will of individuals, however wise those individuals might be.

This is the origin of the constitutional principle that every modern democracy regards as axiomatic to prove that society is governed by laws, not by men.

Aristotle: Natural Law, Positive Law, and Proportionality

If Plato provided the philosophical aspiration, Aristotle provided the analytical tools.

Aristotle's contribution to legal theory rests on three foundations, each of which has generated centuries of jurisprudential development to the rule of law which is found in the development of the common law by precedents in the highest appellate courts in the Commonwealth and prescriptive set out as a guarantee to the citizens of Papua New Guinea pursuant to section 60 of the Constitution of the Nation which reads as follows:

"Section 60. DEVELOPMENT OF PRINCIPLES. In the development of the rules of the underlying law in accordance with Schedule 2 (adoption, etc., of certain laws) particular attention shall be given to the development of a system of principles of natural justice and of administrative law specifically designed for Papua New Guinea, taking special account of the National Goals and Directive Principles and of the Basic Social Obligations, and also of typically Papua New Guinean procedures and forms of organization."

First, Aristotle distinguished between natural law or the universal principles inherent in human nature and accessible to reason, and positive law representing the man-made statutes reflecting the customs and circumstances of particular societies.

Natural law is the same everywhere whereas positive law varies.

The distinction does not render positive law illegitimate.

Aristotle was an amplified empiricist to negative that theory, however, it provides a standard by which positive law may be evaluated and, if necessary, condemned.

The distinction is the intellectual ancestor of the natural law tradition that runs from Aquinas through Grotius through Locke to the Universal Declaration of Human Rights.

Second, Aristotle articulated the concept of ἐπιείκεια (epieikeia) translated into the English meaning of equity or fairness which remains as a necessary corrective mechanism to the inherent rigidity of the written law.

According to Aristotle no legislator can anticipate every circumstance, he observed.

When the literal application of a rule produces an outcome that the rule's framers would have condemned if they had foreseen it, justice requires that the rule be interpreted in light of its purpose rather than its letter.

This is the direct philosophical ancestor of the equitable jurisdiction of the English Court of Chancery and superior common law courts apply the power to produce an equitable result by application of the entire doctrine of equity in the common law world.

Third, and most immediately relevant to the jurisprudence of the European Union, Aristotle articulated the principle of proportionality with a clarity that has proven philosophically indestructible.

Aristotle's analysis of distributive justice in the *Nicomachean Ethics* established the proposition (which was later described by scholars as 'thin justice') that 'like cases should be treated alike and unlike cases should be treated unlike to the extent of their unalikehood.'

The Aristotelian formulation underlies the entire proportionality doctrine that the Court of Justice of the European Union and the superior courts of justice in the Commonwealth have elevated to a constitutional principle of the highest order.

The Stoics: Universal Reason and the Brotherhood of Humanity

The Stoic philosophers including Zeno of Citium, Cleanthes, Chrysippus, and their successors contributed to legal thought carrying the idea of perhaps greater long-term significance than any single doctrine.

The philosophical notion embodied the proposition that all human beings share in a universal reason (the λόγος, logos) that makes humankind, in the most fundamental sense, equal.

The wise person, the Stoics argued, lives in agreement with this universal reason, and recognises that all rational beings, regardless of their city, their class, their origin, or their status as free or enslaved must participate in a shared human community.

The idea is not merely philosophy.

It is the intellectual foundation of the concept of universal human rights.

The notion that there are entitlements that belong to every human being simply by virtue of their humanity and not merely as citizens of a particular state, not as members of a particular religion, not as beneficiaries of a particular social contract, driven by the fact that as rational creatures sharing in the common logos the empirical reality is that this proposition must be true.

The internal belief, which drives every international human rights instrument from the Universal Declaration of 1948 onward, has its philosophical roots in the Stoa, in the

teaching of Zeno of Citium, who was himself, as his name suggests, a sophist of Greek Cypriot origin.

VI. THE TRANSMISSION: ROME, BYZANTIUM, AND THE ROAD TO THE COMMON LAW

The story of how ancient Greek legal thought reached the modern world is one of the most remarkable episodes in intellectual history and well worth studying.

The history of transmission, translation, and transformation across two and a half millennia, through empires and cultures that would have been incomprehensible to the Athenians who first articulated the ideas is comparable to the blind Homer's epic tale recounted in the Iliad & Odyssey.

Rome: The Greek Inheritance Through Roman Lenses

The Roman legal tradition is the dominant vehicle through which Greek legal ideas reached the modern world, and the relationship between the two traditions is more intimate than most legal historians have been willing to acknowledge.

The ancient Greeks created the precedents of the laws and codes in good faith, and the Romans applied the laws absent bad faith.

Professor Carleton Stanley's observation in the Canadian Bar Review that the Roman Twelve Tables of 450 BCE were modelled on the Athenian Code of Solon has been confirmed by the internal evidence of those tables themselves.

The commission that the Roman Senate sent to the Greek cities of southern Italy and Sicily known as the **Magna Graecia** was to study the legal arrangements brought back not merely specific rules but the fundamental principle that law must be written, public, and accessible to all citizens.

But the deeper Greek influence on Roman law operated through philosophy rather than through direct legal borrowing.

Cicero who remains one of the greatest Roman jurist-philosopher absorbed the natural law tradition of the Stoics and gave it a specifically Roman formulation in his ***De Re Publica and De Legibus***.

Cicero's definition of the true law as 'right reason in agreement with nature, of universal application, unchanging and eternal' exists as a definition that was itself an elaboration of Stoic doctrine then sprouting into the foundational text of natural law jurisprudence for the next two thousand years.

Roman equity, the tradition of the praetor's edict, which supplemented the strict civil law with remedies based on good faith and equitable principle is itself a direct application of Aristotle's concept of ἐπιείκεια.

The Roman distinction between *ius civile* (the law of the city) and *ius gentium* (the law of nations, applicable to dealings between citizens of different states) reflects the Stoic philosophical distinction between the particular and the universal.

Subsequently, the Roman development of legal jurisprudence, defined as the systematic analysis of legal rules and their justifications, was itself a response to the absence of this analytical tradition in Greek law, an absence that Greek philosophy had identified and that the Romans, characteristically, proposed to supply.

Byzantium: The Greek Restoration

The most direct and underacknowledged vehicle of Greek legal influence on the Western tradition is the Byzantine Empire found in situ in the Greek-speaking Eastern Roman Empire centred on Constantinople.

The civilisation and society in Constantinople ultimately preserved, transmitted, and transformed the classical legal heritage from the fourth century CE until the fall of Constantinople in 1453, a period of almost a millennium of time.

The pivotal moment is the reign of the Emperor Justinian I in the sixth century CE.

The ***Corpus Juris Civilis*** attributed to Justinian's comprehensive codification of Roman law, published between 529 and 534 CE, was the work of a Greek-speaking legal mind operating in a Greek-speaking empire.

The lawyer who directed the codification, Tribonian, was described by his contemporaries as 'the greatest legal mind of the day', working tirelessly with a team of lawyers drawn from the great law school at Beirut, itself a Hellenised institution akin to Law Reform Commissions found in Commonwealth nations globally.

More significantly, the Empress Theodora, who was Justinian's wife and co-ruler, and whose influence on the shape of the Corpus is now acknowledged by historians, brought a distinctly Greek understanding of justice to the enterprise.

Empress Theodora (a Greek name that means '**gift from god**') legislated that rape was made punishable by death regardless of the rank of the offender.

Theodora then codifying that the rapist's property was transferred to the victim in the effort to protect women's rights, and legalised the protection of women's rights in divorce proceedings which were substantially expanded.

The Corpus Juris Civilis, in short, is not merely a compilation of Roman law. It is a Hellenic synthesis.

It is also the source of the legal systems of virtually every civil law country in the world.

The legal traditions of France, Germany, Italy, Spain, the Netherlands, the Scandinavian countries, Latin America, Japan, and the modern state of Greece herself all derive from the Corpus Juris Civilis.

When the preface to that Corpus quotes Demosthenes, in the original Greek, on the meaning of law, it is not a gesture of antiquarian sentiment. It is an acknowledgement of intellectual patrimony.

The Common Law: Equity and the Hellenic Connection

The common law tradition which applies the tradition within which the courts of Papua New Guinea, Australia, England, and dozens of other jurisdictions operate traces back in history to the English royal courts of the twelfth century and the reforms of Henry II including the manifesto of the Magna Carta which is the foundation document for the Constitution of the United States of America.

This is not wrong, but it is incomplete.

The development of equity introducing the body of law administered by the Court of Chancery, which supplemented the rigid common law with remedies based on conscience, good faith, and fair dealing was a re-emergence, through different institutional channels, of the Aristotelian concept of ἐπιείκεια.

When the Lord Chancellor of England in the fourteenth century began to exercise a jurisdiction based not on the letter of the law but on the justice of the individual case in order to grant specific performance, enforcing trusts, issuing injunctions, correcting written instruments for mistake and misrepresentation, he was exercising his power as a judge, in an English medieval institutional context, to apply what Aristotle had prescribed in the Nicomachean Ethics eighteen centuries earlier.

The legal concept of equity was to correct the patent injustice that arises when general rules are applied mechanically to circumstances the framers did not foresee.

The Judicature Act of 1873, which merged the courts of law and equity into a single Supreme Court of Judicature, was in one sense the institutional culmination of this tradition and in the recognition that justice and law should not be separated in different courts, but should always operate as one living conclave of a melodious jurisprudential opus.

VII. THE LIVING LEGACY: ANCIENT GREEK LAW IN THE COURTS OF THE EUROPEAN UNION

The claim that ancient Greek law continues to operate as a living force in the jurisprudence of the European Union courts is not a matter of historical sentiment or rhetorical flourish.

It is a demonstrable proposition, traceable through specific doctrines, specific judgments, and specific citations.

What follows is an account of ten of the most significant examples drawn directly from the Court of Justice of the European Union, the European Court of Human Rights, and the General Court in which ancient Greek legal principles have been cited, referenced, or applied in published judgments of those courts.

1. The Principle of Proportionality — Aristotle's Enduring Gift

The most pervasive and explicitly acknowledged Hellenic inheritance in EU law is the principle of proportionality.

Scholars of European law, including the editors of the Max Planck Encyclopaedia of European Private Law, trace this principle directly to Aristotle's analysis of distributive justice in the *Nicomachean Ethics*, where he established that justice requires 'like cases to be treated alike and unlike cases to be treated unlike to the extent of their unalikehood.'

This Aristotelian formulation is what legal theorists describe as 'thin justice' with a splash of minimalistic consideration, but indestructible.

The Court of Justice first applied the proportionality principle in *Case 8/55, Fédération Charbonnière de Belgique v High Authority* [1956] ECR 297, where it stated that EU institutions may not impose obligations on citizens except to the extent strictly necessary in the public interest to attain the purpose of the measure.

The Court made the principle explicit in *Case 11/70, Internationale Handelsgesellschaft* [1970] ECR 1125, and elevated it to the status of a general principle of Community law in *Case 265/87, Schröder* [1989] ECR 2237.

Today, Article 5(4) of the Treaty on European Union constitutionalises the principle, requiring that any EU action 'shall not exceed what is necessary to achieve the objectives of the Treaties.'

The intellectual DNA of these provisions is Aristotelian.

2. The Rule of Law — Gagarin's Three Criteria in European Constitutional Law

Professor Michael Gagarin's identification of the three core criteria of the rule of law to include fundamental principles in the rule of law keeping obedient western democracies by:

- i. the regulation of society by rules rather than by violence.
- ii. the principle that no person is above the law. and
- iii. the isolation of legal decisions from extraneous political considerations

The three fundamental principles of the rule of law are echoed with remarkable fidelity in the jurisprudence of both the Court of Justice and the European Court of Human Rights.

The CJEU's judgment in *Case C-64/16, Associação Sindical dos Juízes Portugueses [2018] ECR I-117*, relied upon the rule of law as a foundational principle of the European Union's constitutional order, holding that judicial independence, relying on the fact that the institutional expression of the principle that legal decisions must be isolated from political influence, is a requirement of EU law that member states cannot derogate from.

The court drew explicitly on the principle of separation of powers, itself a Greek institutional invention given systematic form by Montesquieu, whose intellectual debts to Athens and Sparta he repeatedly acknowledged ad nauseum throughout the *Spirit of the Laws*.

3. Nullum Crimen Sine Lege — Draco's Principle in Article 7 ECHR

The principle that no act may be punished unless it was criminal at the time of its commission (*nullum crimen, nulla poena sine lege*) is enshrined in Article 7 of the European Convention on Human Rights and in Article 49 of the EU Charter of Fundamental Rights.

The European Court of Human Rights has applied this principle in several notable judgments.

Its ancient Greek pedigree is directly taken from the Draconian laws of 621 BCE which established, for the first time in the Western legal tradition, that the criminal law must be written, publicly known, and applied only to acts clearly within its terms.

The ECHR's foundational case on *Article 7* is *Kokkinakis v Greece (1993) 17 EHRR 397*, in which the Court held that criminal penalties may only be imposed where an offence is clearly defined in law.

The irony (given the nationality of the parties is rich in the circumstances) is that the case that established the great Greek principle of legality in the European human rights system was itself a case brought against the Greek state which would have

made Dracos the eternal hardline lawmaker break out in an unconventional and uncharacteristic smile where he currently rules in the universe.

4. Equality Before the Law — The Athenian Democratic Principle

The principle that all persons are equal before the law, regardless of birth, wealth, or political connection, is articulated in Article 20 of the EU Charter of Fundamental Rights and underpins the non-discrimination provisions of Articles 21 and 22.

Its ancient Greek origin is the Solonian reform of 594 BCE, which opened the courts to all citizens regardless of class, read together with the Cleisthenean reform of 508 BCE, which reorganised the tribal structure of Athens to break the political power of aristocratic families and to ensure that access to the institutions of justice was geographically and socially distributed.

The Court of Justice applied this principle in *Case C-144/04, Mangold v Helm [2005] ECR I-9981*, recognising equality as 'a general principle of EU law' with roots in the constitutional traditions common to the member states acknowledging traditions that trace, in every case, to the Hellenic democratic experiment resulting in a great grandfather to the modern rule of law.

5. The Right to a Fair Trial — The Dikasteria in Modern Dress

The right to a fair trial is guaranteed by Article 6 of the ECHR and Article 47 of the EU Charter as a necessary element of the modern institutional expression of the Athenian principle that every citizen is entitled to have his or her case heard by an impartial tribunal, with the opportunity to present evidence and argument, and to receive a reasoned decision.

The key elements of the right under Article 6 demanding independence and impartiality of the tribunal, public hearings, reasonable time, equality of arms, map with remarkable precision onto the features of the Athenian dikasteria.

The requirement of equality of arms, in other words, that each party must have a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage vis-à-vis the other party, is the modern formulation of the Athenian procedural rule that both the plaintiff and the defendant had equal time, measured by the water clock, to address the jury.

6. The Principle of Legal Certainty — Solon's Written Law

One of the general principles of EU law most frequently invoked by the Court of Justice is the principle of legal certainty.

The principle of legal certainty states that citizens must be able to know in advance what the law requires of them, and that legal rules must be clear, precise, and predictable in their application.

This principle is the direct institutional descendant of Solon's most revolutionary innovation gained by the inscription of the laws of Athens on wooden tablets in the agora, where every citizen could read them.

The public display of written law demanding the principle that law must be accessible and knowable was indeed so radical an idea in 594 BCE that Solon's tablets were said to have been kept on display in Athens for two centuries after his death.

The Court of Justice applied the principle of legal certainty in *Case C-158/06, ROM-projecten [2007] ECR I-5103*, holding that the principle requires that rules of law must be clear and precise and their effects foreseeable.

Solon would have been delighted with the judgment and wholeheartedly approved.

7. The Legitimate Expectations Doctrine — Epieikeia in Action

The doctrine of legitimate expectations designed to protect individuals who have relied on public authorities' representations or established practices from having the legal ground shifted beneath their feet without adequate notice or compensation remains one of the most distinctively Hellenic principles in EU law, though it is rarely identified as such.

The legal maxim of legitimate expectation in the law, in its ousia (essence), delivers an application of Aristotle's ἐπιείκεια, or the principle that the mechanical application of legal rules must be tempered by consideration of what justice requires in the particular case, having regard to the reasonable expectations of the individual affected.

The Court of Justice developed this doctrine in a series of cases beginning with *Case 74/74, CNTA v Commission [1975] ECR 533*, and it has been applied in hundreds of subsequent judgments.

AG Kokott, in her Opinion in Case C-127/07, Arcelor Atlantique [2008], made explicit the connection between the proportionality and legitimate expectations doctrines and the underlying principle of justice that Aristotle identified.

8. Human Dignity — Stoic Universalism at the Heart of European Law

The concept of human dignity, with its primary place now enshrined in Article 1 of the EU Charter of Fundamental Rights as 'inviolable', has its deepest philosophical roots in the Stoic tradition.

The Stoic teaching that all human beings share in a universal reason (λόγος) that makes them, in the most fundamental sense, equal and equally worthy of respect is

the philosophical foundation of the concept of inherent human dignity that drives every modern human rights instrument.

The Court of Justice recognised human dignity as a general principle of Community law in *Case C-377/98, Netherlands v European Parliament and Council [2001] ECR I-7079*, where Advocate General Jacobs grounded the principle explicitly in the constitutional traditions common to the member states reflecting traditions that flow, in every European legal system, from the Hellenic philosophical inheritance through Rome, Byzantium, and the Enlightenment.

9. The Principle of Non-Retroactivity — The Gortyn Code in Modern Dress

The principle that laws may not be applied retrospectively to the detriment of individuals, remaining a corollary of the *nullum crimen* principle, is as old as the Gortyn Code itself.

The Gortyn Code's opening provision stated in the clearest terms that no one may be seized before trial, that legal processes must precede any deprivation of liberty, containing within it the principle that the state may not act against the individual in reliance on rules that did not exist at the time of the relevant conduct.

The Court of Justice gave this principle systematic expression in *Case C-98/78, Racke v Hauptzollamt Mainz [1979] ECR 69*, holding that the principle of non-retroactivity of criminal legislation 'forms part of the constitutional traditions common to the Member States' and is therefore a general principle of Community law.

The constitutional traditions common to the Member States, in this context, means the traditions that trace their lineage through the great codifications with reference to Justinian's *Corpus*, the Napoleonic Code, the German BGB, are proven to date back to the Greek and Roman originals.

10. Democratic Governance and Judicial Accountability — The Athenian Experiment at Scale

The deepest and most pervasive Hellenic inheritance in the jurisprudence of the EU courts is the democratic principle itself.

The principle that political authority derives from the people, that it must be exercised through transparent and accountable institutions, and that the individual citizen must have access to independent courts that can check the exercise of that authority.

The Court of Justice gave this principle its most sweeping modern expression in *Case C-64/16, Associação Sindical dos Juizes Portugueses [2018]*, where it held that the independence of national courts is required by EU law as a component of the rule of law, itself a founding value of the Union under Article 2 TEU.

The Court declared that:

'the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law.'

This formulation that the rule of law requires effective judicial review is Athenian to its core.

Solon's creation of the right of appeal from magistrate to people's court in 594 BCE was precisely on this fundamental point.

The recognition that executive power must be judicially reviewable, that the individual must have a mechanism for challenging the decisions of those who govern, and that this mechanism must be accessible, impartial, and effective.

The Greek word for this accountability is εὐθύνη (euthyna) states that the periodic review to which every Athenian magistrate was subjected at the end of his term of office, at which any citizen could bring a complaint, is critical in strengthening the rule of law within society.

The EU's judicial review jurisdiction under Article 263 TFEU is the modern institutional descendant of the Athenian euthyna.

VIII. EPILOGUE: FROM ATHENS TO THE PACIFIC — THE CIRCLE OF DIKĒ

There is a word that appears in both Greek and Papua New Guinean Tok Pisin that captures, in different ways, the same irreducible human hunger.

In Greek, it is δίκη (dikē), namely the concept of justice, the right path, the legal claim that may be brought before a tribunal.

In the highlands of Papua New Guinea, the word most commonly used to describe the desire for resolution after conflict is something that translates, with rough approximation, as 'stret', which is conceptually the idea of being straight, right, honourable, traditionally respectful and, of course, in proper order.

Different languages. Different millennia. The same hunger from the worlds ancient cultures.

When I was appointed as Resident Judge of Hela Province in May 2025, Chief Justice Salika smiled and suggested that he trusted me with his mandate and blessing as 'his brother' to reopen courts that had been closed for seven years by tribal conflict and violence.

The local national judges feared to open the court in Tari.

I was, in the most literal sense, doing what the ancient Athenians had done when they responded to the blood feuds of pre-legal society by creating an institution capable of replacing vendetta with adjudication.

I was carrying the same institution including the independent court, the impartial tribunal, the place where even the weak may speak and be heard and to a place where, the rule of law, had been absent.

I do not romanticise the undertaking and promise I swore to the people of Papua New Guinea I would uphold.

The courts of Hela Province face challenges that would have been unimaginable to Solon.

For example, a population fractured by decades of inter-tribal violence, a criminal justice system operating in conditions of genuine physical danger, a community with little reason to trust institutions that have repeatedly failed them, a lack of funding, no continuous power to run a fair trial, only brave court staff prepared to accompany the judge in his tasks, isolation, group fighting causing hundreds of dead with no accountability, war lords governing over the rule of law, gender-based violence, poverty and a lack of education, few systems in place like modern jails, detention centres for troublesome youths, high unemployment, a dire lack of health and community facilities and the list seems to never end.

The distance between the marble columns of the Stoa Poikile and the courtroom in Tari is not merely geographical.

Yet, it is my place of work and home and the principles supporting the rule of law are the same.

The proposition that disputes should be resolved by a tribunal applying known rules, rather than by the stronger party imposing its will by force.

The proposition that every person who comes before the court, however powerful or however powerless, is entitled to a hearing before me.

The proposition that the judge is not the servant of the government or of any particular faction, but of the law itself, and through the law, of the community.

The proposition that justice referred to as δίκη in this presentation is not a luxury of advanced civilisation but a foundational condition of any human community worthy of the name.

These propositions were first articulated, with philosophical rigour and institutional creativity, by the ancient Greeks.

They were transmitted through Rome, through Byzantium, through the common law tradition, through the Enlightenment, and through the constitutional architecture of the modern democratic state, to the courts of the European Union, the Courts of the Commonwealth, to the Supreme Court and National Courts of Papua New Guinea, and

to a courtroom in Tari, Hela Province, where they continue to the present day to be the measure of what justice requires.

The ancient Greeks understood that law is not merely a set of rules as it remains as a civilisational and honourable commitment.

The commitment to serve society to replace violence with argument, vendetta with adjudication, and power with accountability.

That commitment, first articulated in the agora of Athens, continues to define what it means to administer justice in any jurisdiction, at any time, in any culture.

It is an honour to be part of that tradition.

I appreciate your present time with me and thank you for your audience.

The Hon. Justice A.S. Kostopoulos

Supreme and National Courts Papua New Guinea

Resident National Court Judge

at Tari in the Hela Province

Judge's Chambers - June 2026

ANNEX:

TABLE OF EU COURT REFERENCES TO ANCIENT GREEK LEGAL PRINCIPLES

The following table sets out, in consolidated form, the ten principal examples discussed in Part VII of this paper of the citation, reference, or application of ancient Greek legal principles in published judgments and opinions of the Courts of the European Union.

1. *Fédération Charbonnière de Belgique v High Authority*

Citation: *Case 8/55 [1956] ECR 297* | **Court:** Court of Justice of the EU

Greek Principle: Proportionality — first application in EU law; principle traceable to Aristotle's analysis of distributive justice (*Nicomachean Ethics*, Book V).

2. *Internationale Handelsgesellschaft*

Citation: *Case 11/70 [1970] ECR 1125* | **Court:** Court of Justice of the EU

Greek Principle: Proportionality — AG Dutheillet de Lamothe's Opinion explicitly addressed the principle; Court held that a public authority may not impose obligations on a citizen beyond what is strictly necessary. Aristotelian ancestry acknowledged in subsequent scholarship.

3. *Schröder HS Kraftfutter GmbH & Co KG v Hauptzollamt Gronau*

Citation: *Case 265/87 [1989] ECR 2237* | **Court:** Court of Justice of the EU

Greek Principle: Proportionality elevated to a general principle of Community law — constitutionalising the Aristotelian 'thin justice' standard.

4. *Kokkinakis v Greece*

Citation: *App No 14307/88 (1993) 17 EHRR 397* | **Court:** European Court of Human Rights

Greek Principle: *Nullum crimen sine lege* (Article 7 ECHR) — foundational ECHR case on legality of criminal law; the Greek state's law was measured against the Draconian-Solonian principle of written, accessible, and foreseeable criminal law.

5. *CNTA v Commission*

Citation: *Case 74/74 [1975] ECR 533* | **Court:** Court of Justice of the EU

Greek Principle: Legitimate expectations — application of *epieikeia* (Aristotle's equity doctrine) to protect individuals from retroactive change in legal position by public authorities.

6. Mangold v Helm

Citation: *Case C-144/04 [2005] ECR I-9981* | **Court:** Court of Justice of the EU

Greek Principle: Equality before the law recognised as a general principle of EU law — descending from Solon's and Cleisthenes' democratisation of access to the Athenian courts.

7. Netherlands v European Parliament and Council

Citation: *Case C-377/98 [2001] ECR I-7079* | **Court:** Court of Justice of the EU

Greek Principle: Human dignity recognised as a general principle of Community law — AG Jacobs' Opinion grounded the principle in constitutional traditions common to member states; those traditions trace to Stoic universalism (Zeno, Chrysippus).

8. Racke v Hauptzollamt Mainz

Citation: *Case C-98/78 [1979] ECR 69* | **Court:** Court of Justice of the EU

Greek Principle: Non-retroactivity of criminal legislation recognised as a general principle of Community law, descending from the Draconian/Solonian tradition of publicly known, pre-existing written law.

9. Associação Sindical dos Juízes Portugueses

Citation: *Case C-64/16 [2018]* | **Court:** Court of Justice of the EU (Grand Chamber)

Greek Principle: Judicial independence as a component of the rule of law — the Court held that the independence of national courts is required by EU law; the principle descends from the Athenian euthyna (accountability review of magistrates) and Gortyn Code's isolation of legal decisions from political considerations.

10. ROM-projecten BV v Staatssecretaris van Economische Zaken

Citation: *Case C-158/06 [2007] ECR I-5103* | **Court:** Court of Justice of the EU

Greek Principle: Legal certainty — laws must be clear, precise, and foreseeable; the Solonian principle of written, publicly inscribed law as the foundational condition of individual liberty.

ANNEX

TABLE OF EU COURT REFERENCES TO ANCIENT GREEK LEGAL PRINCIPLES

#	Case Name	Citation	Court	Greek Principle Applied
1	Fédération Charbonnière de Belgique v High Authority	Case 8/55 [1956] ECR 297	CJEU	Proportionality — first application in EU law; traceable to Aristotle's distributive justice (Nicomachean Ethics, Book V)
2	Internationale Handelsgesellschaft	Case 11/70 [1970] ECR 1125	CJEU	Proportionality — public authority may not impose obligations beyond what is strictly necessary; Aristotelian ancestry acknowledged in subsequent scholarship
3	Schräder HS Kraftfutter GmbH & Co KG v Hauptzollamt Gronau	Case 265/87 [1989] ECR 2237	CJEU	Proportionality elevated to a general principle of Community law — constitutionalising the Aristotelian 'thin justice' standard
4	Kokkinakis v Greece	App No 14307/88 (1993) 17 EHRR 397	ECtHR	Nullum crimen sine lege (Art 7 ECHR) — foundational case on legality; Greek state's law measured against the Draconian-Solonian principle of written, accessible, foreseeable criminal law
5	CNTA v Commission	Case 74/74 [1975] ECR 533	CJEU	Legitimate expectations — application of epieikeia (Aristotle's equity doctrine) to protect individuals from retroactive change in legal position by public authorities

6	Mangold v Helm	Case C-144/04 [2005] ECR I-9981	CJEU	Equality before the law recognised as a general principle of EU law — descending from Solon's and Cleisthenes' democratisation of access to the Athenian courts
7	Netherlands v European Parliament and Council	Case C-377/98 [2001] ECR I-7079	CJEU	Human dignity as a general principle of Community law — AG Jacobs grounded the principle in constitutional traditions tracing to Stoic universalism (Zeno, Chrysippus)
8	Racke v Hauptzollamt Mainz	Case 98/78 [1979] ECR 69	CJEU	Non-retroactivity of criminal legislation as a general principle of Community law, descending from the Draconian/Solonian tradition of publicly known, pre-existing written law
9	Associação Sindical dos Juizes Portugueses	Case C-64/16 [2018]	CJEU (Grand Chamber)	Judicial independence as a component of the rule of law — descending from the Athenian euthyna (accountability review of magistrates) and the Gortyn Code's isolation of legal decisions from political considerations
10	ROM-projecten BV v Staatssecretaris van Economische Zaken	Case C-158/06 [2007] ECR I-5103	CJEU	Legal certainty — laws must be clear, precise, and foreseeable; the Solonian principle of written, publicly inscribed law as the foundational condition of individual liberty

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