Draco’s Code Is Instituted

**CATEGORIES** Laws, acts, and legal history; government and politics

**DATE** 621 or 620 B.C.E.

**LOCATE** Athens

*Draco’s code represented the beginning of Athenian legal and constitutional history and, for the first time in Europe, formulated a distinction between intentional and unintentional homicide.*

**SUMMARY OF EVENT**

According to ancient traditions, Draco was a Greek statesman who drew up the first code of law for the Athenians during the archonship of Aristaechmus in 621/620 B.C.E. Although Draco and his laws are mentioned more than fifty times in various sources, the evidence is so conflicting that it is difficult to determine the nature and extent of his legislation. It has even been denied by some noted scholars that there ever was a human lawgiver with this name, the Greek *drakon* referring instead to a “serpent god” that the Athenians credited with drawing up their first legal code. However, Draco was also a common personal name. The Greek Sophist Prodicus was aware of the difficulty surrounding the word *drakon*, and his famous pun reported in Aristotle’s *Technē rhetorikēs* (335-323 B.C.E.; *Rhetoric*, 1686) scarcely makes sense if the Athenians believed that their lawgiver was a snake: “They are not the laws of a man but of a ‘snake,’ so severe are they.”

Other scholars have maintained that much of the evidence regarding Draco’s legislation is the product of fourth century B.C.E. research and merely proves, if anything, that Draco drew up some laws regarding homicide. Such narrow interpretation of his activities, however, does not agree with all the evidence. Aristotle obviously attributed laws other than those on homicide to Draco. He states in his *Athenaiōn politeia* (335-323 B.C.E.; *The Athenian Constitution*, 1812), for instance, that after the Athenian statesman *Solon* had drawn up a constitution and enacted new laws, “the ordinances of Draco ceased to be used, with the exception of those pertaining to murder.” Writers as early as Xenophon (c. 431-c. 354 B.C.E.) and Lysias (c. 445-c. 380 B.C.E.) refer to Draconian laws that were no longer in force. In 403 B.C.E., Greek statesman Tisamenus enacted a decree providing for the enforcement of the laws of *Solon* and of Draco as in earlier times. Various sources indicate that the legislation of Draco appeared to cover, in addition to homicide, such crimes as theft, vagrancy, adultery, the corruption of youth, neglect of the gods, and violation of the oath taken by jurors.

Like other early lawgivers, Draco probably did not so much initiate new legislation as reduce customary law to an orderly and usable form in writing. He may also have drawn on the decisions of earlier magistrates as recorded by the *thesmothetes*, or judges. According to Aristotle’s *Politica* (335-323 B.C.E.; *Politics*, 1598), there was nothing unusual enough to mention about Draco’s laws “except the greatness and severity of their penalties.” Indeed, the severity of these laws had become legendary; Greek biographer Plutarch in his life of *Solon* reports that Draco’s laws, except those relating to homicide, were repealed by *Solon* because they prescribed punishments regarded as too severe. Idleness or stealing a cabbage or an apple were capital offenses as serious as sacrilege or murder, and it was held that his laws were written not in ink but in blood. When Draco was asked why he assigned the death penalty for most offenses, he is reputed to have replied: “Small ones deserve that, and I have no higher for the greater crimes.”

Such severity should not cause surprise. Most early codes of law were harsh in assigning severe penalties for petty crimes, as attested by early Hebrew law, Zaleucus’s code, and the Twelve Tables of Rome. Not until the time of the Enlightenment was there much concern to make the punishment fit the crime, and in England some severe and unreasonable penalties prescribed in Elizabethan times remained in force throughout the nineteenth century. Consequently, Draco’s harshness, considering the times, can be exaggerated. Death was not the only...
penalty inflicted on violators; lesser infringements drew fines, disfranchisement, or exile. In the case of homicide, his legislation appears enlightened in that it drew careful distinction between willful murder and accidental or justifiable manslaughter. Evidence for such a view comes not only from the legal procedures that were established in his day but also from a copy of his homicide law that was erected in front of the Royal Portico in 409/408 B.C.E. by a decree of the Council and People initiated by Xenophanes.

SIGNIFICANCE

Draco’s laws marked definite advances. By designating crimes, fixing penalties, and establishing rules of procedure, he made it easier for the poor and the weak to obtain justice. His laws on homicide so effectively put an end to the blood feuds that had plagued Athens that other primitive communities adopted Athenian laws generally.

The ancient city developed out of a gradual federation of groups, and it never was an “assembly of individuals.” Draco’s code represents the time when the coalescing city was forced to curtail the sovereignty of the tribe and family and to interfere first of all, for the sake of peace, in its prerogative of the blood feud. In the case of intentional homicide, old tribal rights were still honored; in the case of self-defense, however, the new city saw a reasonable place to begin its encroachments on tribal rights. In the case of involuntary homicide, probably often occurring between persons of different groups and unknown to each other, the city again saw wisdom in restricting old tribal blood feuds. Consequently, Draco’s code is interesting not only as a history of Athenian jurisprudence but also as an index of the growing jurisdiction of the city of Athens itself. That the “state” did not concern itself with murder in the Greek poet Homer’s day is quite likely inasmuch as the “city” in that era had not developed out of tribal associations but still represented the concerns of a noble family.

FURTHER READING

- Gagarin, Michael. Drakon and Early Athenian Homicide Law. New Haven, Conn.: Yale University Press, 1981. The most complete academic analysis of Draco’s law code, with attention to its historicity and impact, by a distinguished scholar of early Greek law.

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