PART I

LAW AND RELIGION AS MEANS TO CONTROL THE FUTURE
DIVINE LAW AND
THE PENALTY OF SACER ESTO IN EARLY ROME

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1. The Concept of “Divine Law”

Much has been said and written on the topic of divine law in the Roman Republic. In this paper I shall focus on the subject of divine law in early Rome until the first decades of the Roman Republic.

It has often been noted that, already at an early stage, Roman law had a distinctly secular character. However, the situation regarding law in early Roman society is not so unambiguous. One has to realize that archaic Rome did not distinguish between divine and human law or justice. Rather religion permeated all aspects of archaic Roman society. To start with, the expression “divine law” can be understood in more than one way. It can be understood as referring to cultic or ritual laws, which means laws concerning the way in which the gods are worshipped. It is also possible to speak of “divine law” in cases in which legal provisions regarding human interaction contain some religious element. Yet another distinction that can be made in this respect is that between rules attributed to the gods and those reaching back to human lawmakers. Very often these distinctions appear to be blurred. Modern scholars, following the Roman sources, generally distinguish between fas and ius. Servius states that “fas refers to religion, iura to human beings.” In other words: fas is “divine law”, “sacred law”, whereas ius is “human law”.

According to tradition, the first laws in Rome were made by the first kings. In the sources, we find laws going back to and, in fact, attributed to