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The Greek Conception of Law  
and Its Later Influence

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It may be that the greatest contribution to thought made by the ancient Greeks was their conception of law. True, it is for their mathematics and science, their literature, art and philosophy that they have been chiefly praised, whereas legal conceptions have generally been held to be a contribution of the Romans. But if one examines the rich and multifarious legacy of the Greeks one sees that their conception of law is intertwined with it all. Their genius has often been called *plastic*, which indeed, on one side, it is. But that adjective will hardly apply to their mathematics, on which so much of their science and philosophy—and indeed of their art—is based. Plastic, in the Greek sense, means “*giving a shape to*”, whereas mathematic means “*discovering a shape that is unalterable and eternal*”. We must consider all these things together, and if we do we cannot overlook their ideas of law, which are fused in all their activity; which are unique perhaps, complex, and not easy to seize at first grasp; and yet which, to modern civilized Europeans, have seemed to be unusually valid.

Europeans (the term covers other continents than Europe today) before they became scientists and scientific historians found it easier to grasp what the Romans meant by law, and no one denies the existence of a great Roman legal system; nor do we overlook that in the eleventh century of our era the law school of Bologna, based on Roman traditions, began to influence

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all western Europe, nor that when legal systems began to grow up anew, they were formulated by men whose speech was Latin, and whose great prose model was Cicero, a pleader in the courts of Republican Rome.

But no scholar of modern times has thought it possible to say anything definite about Roman law prior to the Twelve Tables of 450 B.C., which according to the Roman records were modelled on the Athenian Code of Solon, of 594 B.C. There is enough "internal evidence" to confirm the Roman record. Three centuries after this date it became necessary, since Rome had now become the leading Mediterranean power, to revise the Roman laws. For this later period we have adequate evidence, and it all shows that once again the Romans leaned heavily on the Greeks. Indeed the preface to the last Roman code of all, the Justinian, of the sixth century A.D., is a quotation from Demosthenes, on the meaning of law, and is recorded in the original Greek. (The fact that John of Salisbury, in the twelfth century, quotes this preface *in Latin* does not demonstrate that it is either a Roman or a mediaeval conception.)

But Roman law, neither in conception nor in the spirit of its administration, ever became Greek law. In the first place the Romans, unlike the Greeks, were not an imaginative or philosophic people. There is a great wealth of evidence in early and late Greek literature as to how the idea of law developed in the minds of the Greeks. Always there was a lively, even subtle, introspection in the way a Greek used the conception to relate himself with his fellows. He even said that it was only part of himself that entered into this relationship — and that, he added, with an almost blasphemous assurance, was the part of himself which was on a plane with the divine. This was not a flippancy, like Samuel Butler's saying: "An honest God's the noblest work of Man", for with such ideas the Greek early connected the idea of *aidos* (a word we shall refer to later), which provisionally we translate *reverence*. Reverence was owed to the divine, but the divine included this part of himself, which ought to rule other parts of himself. As we shall see, such difficult and even inconsistent ideas were not accepted without endless debate; but the point to notice here is that, to the Greek, law connoted on one side an inner victory, on another a social bond of which he, individually, was partly the author. In early days he called it *dike*, which means, among other things, a "pointing" or mental direction; later he called it *nomos*, meaning, among other things, "a sharing". Now, the Roman word *lex*, like the Roman word

*religio*, strongly suggests what "ties a man down", and there is no suggestion in them of right conduct being self-imposed. Solon said his code would become more and more appreciated by all his fellow-citizens as they made it their own; nearly three centuries later Plato laid it down that a lawgiver must, by stating preambles to them, make each of his laws an appeal to the intelligence and conscience of each citizen (this principle is adopted in the Napoleonic Code). But early and late in Rome the thought was that *the magistrates* should state the rules and name the penalties for infractions; that there should be *magistrates* to bring offenders to book, and according to the strict letter. In time there grew up a learned legal profession, talking an archaic jargon. Everything legal became more and more formal, just as everything religious became more and more ritualistic. (Cicero, himself a professional advocate and a priest, on occasion made fun of both jargon and ritual.) In short, there was a formidable externality about law for the Roman. The Greeks, on the other hand, became more and more humane in their conception of law, regarding it as an expression of their own best selves. They never grew themselves either a legal profession or a judiciary; that each citizen should understand the law, and appreciate its vital importance both to himself and to the state, was a function of his citizenship; and when cases were tried they were mostly brought before large panels of citizens, the panels being drawn up in rotation from the whole citizen roll. This is what Herodotus calls "fairness and evenness of law", and cries lyrically: "the very name of it is lovely". In more sober mood the same writer says of his fellow-countrymen: "Being free they are not wholly free; for over them stands the despot called Law". The Greek knew that law coerced him, but took pride in the thought that he himself, his better self, was the source of the coercion.

This idea of fairness and humanity was elaborated further. Even all the best selves of one generation could not safely formulate rules for the future. Aristotle says it would be an endless task to think of all the possibilities. Only the guiding first principles could be stated and codified. The letter of the law would often fail to get at the justice or injustice in a given new case. The question would then arise: What was the intention and essential understanding on both sides? The court must then base itself on "fair play" and "seemliness". This was called *epieikeia* — that is equity, in the special sense in which it is used in modern jurisprudence. The introduction to the Napoleonic Code pays special attention to it. Vinogradoff says that it is a wholly Greek idea.

I have alluded to John of Salisbury (1115-1180) quoting a Greek's description of law. But it is fairly late in our era that men rise to the Greek conception of law. Francis Bacon, in his famous *Apothegms* on the subject of law, shows not the slightest tincture of it. (We know that Bacon despised Plato and Aristotle and regarded Greek thinking as puerile.) So far as my reading goes the Dutchman Hugo de Groot is the first of the moderns to grasp any of the Greek principles of law. His treatise *De Jure Belli ac Pacis* (1625) was published during the Thirty Years' War, a time unmatched for ferocity in European annals until the Hitler period, a time when many wise men utterly despaired of civilization. De Groot is a Christian writer, but in his day different nations were violently flouting Christianity in the name of religion itself. He is therefore in search of principles inherent in humanity, and being a good Greek scholar he has at his fingers' ends a great wealth of illustration which is non-Christian. Much of his thought and his whole manner of argument is Greek. He leaps over those Roman praetorian courts, which Bacon is fond of citing, and at once puts the discussion of what law is, in the minds of men, into the very atmosphere where Aristotle had left it.

At least, De Groot is a turning point in European discussion. From his time men went on more and more thoroughly to examine what the Greeks had meant by law, both for the individual and society, both in the state and internationally. To be sure there were ebbs and flows. In seventeenth century Holland De Groot was much suspect for the following statement (which is Greek at all points): "The law of nature is unalterable; God himself cannot alter it, any more than he can alter a mathematical axiom; this law has its nature in the basis of man, a social being: it would be valid even if there were no God; or if God did not interfere in the government of the world". It was easier to deal in such notions in eighteenth century France than it had been in seventeenth century Holland; and the greatest book of eighteenth century France, as a competent critic has said, was Montesquieu's *L'Esprit des Lois* (1748). Even that book, through reactionary French influence in the Vatican, was put on the *Index Expurgatorius*, and was not well received by nationalistic Frenchmen, who complained that it was English, not French in thought. Really it is strikingly Greek in many ways: in its comparative method, and in its humanistic tone.

The fact is that during the whole eighteenth century many Frenchmen were addicted to Greek studies, and in the spirit of

the ancient Greeks, as no modern Europeans had yet been. They were archaeological, studying Greek sites all over the Aegean world; they were scientific in their study of history; there was no aspect of Greek development which they did not scrutinize, and they saw that Crete, Phoenicia and Egypt could not be left out of this purview. Before the century was over certain Frenchmen had revived the study of biology — the last of the Greek sciences to be taken up by modern men — and at least two of them had some glimmering of the Greek theory of evolution, without which one cannot read Thucydides or Aristotle intelligently, or clearly understand what the Greeks meant by law.

Not least, some Frenchmen began to see that Greek civilization had been a very long and very slow development — though the hoary lie that it was a short-lived affair still persists in twentieth century textbooks. We shall have to return to the slow development of Greek law further on, but at this point we must mention the importance of its recognition by eighteenth century Frenchmen. The New Testament and Latin literature to a certain extent had represented Greeks as giddy seekers after novelties. The French saw that in earlier times at least the Greeks had shown a remarkable respect for tradition. They could not help but be struck by Aristotle's unequivocal raising of the question whether it is not sometimes wiser to accept a bad law, and go on living under a faulty constitution, than to risk encouraging an itch for innovation. This sort of remark exactly suited French instincts. The French were delighted to find in ancient writers that it is not enough that a lawgiver be far-seeing; one may have to consider whether he sees too far, and fails to understand how limited the outlook of his people may be. The consent of the governed is as much an ingredient of stable rule as the wisdom of the ruler. Law must be all-permeating in society, it must touch the conscience of every member of society, resting on an in-dwelling reverence for right and justice. One is aware of a peculiarly religious thrill in reading what a Greek has to say about eternal and unwritten laws which no lawmaker dare upset, about the iron rules of necessity which control gods as well as men, and about order in the universe — the Greek word for universe literally means order. This tinge of veneration for law runs through all Greek literature from Homer to the latest Attic orators. One feels it in the records of Xenophanes of the sixth century. Xenophanes was famous for insisting on two things: an eternal, indestructible being, and geological change. (He declared that the fossil remains in three different inland

places in the Mediterranean world proved that these places were extinct sea-beaches.) In other words, a part of the eternality of things is that they continually change. And yet slowly! And the gods change too — in men's ameliorating minds!

The Napoleonic Code of 1804 is not the only monument to the French study of Greek law in the eighteenth century. The remarkable demand for a League of Nations, made by President Jefferson in 1801 to all the courts of Europe, is really another. Jefferson, a life-long student of literature, science and law, lived in France from 1784 to 1789. There a topic of learned discussion in political circles was the international leagues of ancient Greek states; and almost certainly Jefferson knew Condorcet, who made so eloquent a plea for abolishing the inequalities between nations. Still another striking testimony to the vitality of French thinking about Greek law is to be found in the poetry of Wordsworth. In 1791-92 chance threw the young Englishman into the society of Michel Beaupuis, a disciple of Montesquieu.

If it be thought a strange thing that we moderns have been so slow in seeing into the implications of this ancient conception, one should reflect that mankind long dispensed with other Greek conceptions: the heliocentric theory — for about 1,700 years; the calculus — for 1,900 years; biology — for about 2,000 years. These were all as Greek as the Greek conception of law. For this last is a peculiarly Greek thing, and the Greeks were conscious of the fact. All through the literature of the fifth and fourth centuries, in poets, historians, orators and philosophers, it is repeatedly stated that Greeks alone really understand law — and this was a period when Greeks were acutely aware of other peoples, past and present.

Now, some of the Greeks linked this peculiar conception, law, the Greek way of life, with their distinctive unit of society, the *polis* — a word usually translated "city-state". But when the word is so translated it is generally assumed that their political units were small because the Balkan peninsula is so geographically pocketed and isolated. A true explanation of the *polis*, the patriotism it evoked, and its persistence all through Greek civilization, had to await the fuller archaeological exploration of Greece itself, and of Crete, to which the Greeks always referred as the cradle of their religion and art, and as a land of many unwallled cities, living at peace with one another — obviously, therefore a federation of trading cities, in full command of the sea. It was not until 1902 that Arthur Evans turned his first spade in Crete. Then began one of the most wonderful addi-

tions to man's knowledge of the human past that has ever been made. Here only the briefest reference can be made to it: the relevance of this Cretan or Minoan civilization to the upgrowth of the *polis* in Greece. Before 1400 B.C. this civilization had partly reproduced itself in continental Greece, in the isles, and in Anatolia. It was in these places, in the following six hundred years, that the *polis* grew up, in a valiant attempt to preserve the older prehistoric culture. So far as art is concerned the story is fairly plainly told in the Vase collection of the National Museum in Athens. That collection, archaeological remains great and small in many parts of Greece, along with the literary records of older tales, are irresistibly conclusive evidence that the city-state, and its expression in law, grew up in a very troubled period, which was roughly as long as the period separating present day Englishmen from the beginnings of representative government. No wonder that a period so long and so difficult gave the Greeks a wave-length to which they never ceased to vibrate so long as they were Greeks!

About two-thirds of the way through these six centuries we find the word *polis* in Homer. There, significantly, it means "fortified place", but as yet has no political significance: social organization is as yet tribal. As soon as we come to the historic period, however, we find that individual life and freedom exist only in so far as a man is a *polites*, or member of a *polis*.

The intense feeling of personal pride which a Greek had as joint author of, and joint sharer in his state's laws, we have already mentioned. In addition, the law is regarded as a saviour and preserver of the community's way of life. All these feelings, and the determination to have the laws maintained, are enhanced by the peculiarly intimate relationship of Greek fellow-citizens. In such small societies it was easier, than it was in vast countries with "self-help" the rule on the remote frontiers, to appreciate Demosthenes' notion that the whole state is sick if one of its members is lawless.

To understand how paramount law was in the Greek mind one must see how strong the relationship was between city and citizen, for law is the living embodiment of that relationship.

The Greeks were great travellers, and in historic times all Greek states except Sparta (which notoriously kept an "iron curtain" round itself) were hospitable. But you could not, no matter how eminent your station in one Greek state, become a member of another by going there to live. You might live there all your life, and marry the daughter of a citizen there, but

neither you nor your children would ever become citizens. Unless you attached yourself to some member of the *polis* you had no position before its laws. Even then you could not buy tillable land, for that, always in theory and often in fact, belonged to the *polis*. Neither could you engage in mining, timber-cutting or cattle-raising, for mines, forests and pastures were the inalienable property of the state. Neither could you participate fully in religious cults and festivals, for these things were rooted in the body politic, in the families and clans of which it had been at some remote time constituted, and in the soil which it owned.

Suppose, on the other hand, that you did belong to the *polis*. You could hardly marry as you choose, for the state prescribed the possibilities and the consequences. When you did marry, the state might intervene to say whether your children, if sickly or maimed, should be allowed to live. There was universal military service, except only in Argos, so your life was not your own. The occupations in which you might engage were prescribed in many states. Religion sat more lightly on the Greeks perhaps than on any people since, still there were state cults and state festivals in which citizens were expected to participate. If you were killed or maimed in war the state would support your dependents. On the other hand, if you were very rich the state could legally requisition from you a large contribution in the public service. Neither trade relationships, nor religious corporations, nor, in many matters, family ties were as close as your tie to the state. (This, by the way, helps to account for Plato's demand, in the *Republic*, that the state should abolish the family altogether. It should be remembered however that this is the period of his life when Plato turned his back on that Greekest of all Greek things, law, and that he later recanted. The other demand in the *Republic*, that property be communistically held, surprises no one who is familiar with Greek history.)

Those parts of the country which are described in Thucydides' sketch of Greek developments as having little settled government, but mainly a rule of force, are the parts to which Minoan culture had never spread, and so which never developed a *polis* in the saving of that culture. We may regard the *polis* as an island of Minoan culture, originally, the possessors of which, in a welter of barbarous invasion, were determined not to lose it, not to lose their "way of life". Indeed merely to live in such a land as Greece, with its inexorable economic necessities, required great political effort and foresight. A careless individual might destroy the water supply for a whole population; a careless generation



might so overpopulate a state as to cause revolution and disaster in the next generation. The Malthusianism of Greek political writers is only one example of the stern realization of the necessity for restraint, if the state were to survive in any continuous way; and continuity was the core of Greek religion, which was shot through with ancestor worship. Now both words *dike* and *nomos*, the early and late words standing for *law*, have as one of their meanings "a way of doing things", "a right and natural way". But to say that "the way of doing things" in Athens for example, or "the law" of Athens, came about in a long struggle for Athenian survival is a very pregnant way of saying that to an Athenian the law is the very embodiment of the state. The ancient Greek would have assented to the modern statement (often a very glib statement) that "law is the crystallized experience of a people"; but he had come by his conception of law very slowly and very painfully, and he preferred to call it "a treasure, and a gift from the gods, which all wise men accept" — to use the words of Demosthenes.

Now, it may seem remarkable, since the conditions under which Greek ideas about law came into existence were so unlike any later conditions, that the Greek conception should have so impressed and influenced later men. Its powerful effect, however, on west-European thought is plainly to be traced from 1625 to 1900. Even those who are not familiar with the history of that period must be struck by the fact that Sir Paul Vinogradoff, the learned author of *Historical Jurisprudence*, devotes one of his two volumes to the Greeks. Again, it might be asked: Even supposing there is some universal validity about the Greek conception, seeing that the small countries of west Europe were so slow in attaining to it, would it not be impossible for a country so large as Canada to adopt it in any real or profitable way? That of course may be the case. It may also be true that a country so large as Canada has more to do for itself in the understanding of law. Or, it may be true that nowadays the size of a political unit is relatively unimportant. Certainly it is true that, relative to the understanding of principles, all else is unimportant. In any case, what is written here is not in advocacy of any policy, nor in censure of any existing conditions: we are merely tracing the history of an idea. To a Canadian reader the contrasts involved may make the whole matter plainer.

Vinogradoff (it is interesting that a Russian should have said this) more than once remarks that in the last resort, or in time of very strong popular feeling, the people is sovereign and can

make the law. We North Americans, however, continuously and from day to day, do not even think of matters in that way. The judiciary is even more marked off than the government from the citizen body: we tend indeed, and for certain good reasons, to believe it should be; but a drawback to whatever merits this arrangement has is that most of us, "members of the community" though we are called, unconsciously regard judicial decisions as things handed out to us, failing to reason matters out, and to reflect that the judiciary itself is a function of citizenship. That law ultimately derives from the citizen body itself is further obscured by the existence of a large legal profession, who, along with the judiciary, have a special knowledge of the laws, in which the citizens at large have no share.

A fifth century Greek could have understood our way of life, and understood its merits, for he was fond of analyzing other ways of life than his own — Carthaginian, Egyptian and Persian — and for the Persians, who held sway over a vast area, he had considerable admiration. He would have thought our representative government highly ingenious, and our spirit of tolerance truly humane. But he would, I think, have shaken his head over our general aloofness from our law: "Surely the law must be known and understood by all, if it is to be appreciated, and if it is not appreciated . . . !" If we replied that our law was multifarious and technical, and that most of our people could not understand it, he would probably reply: "Perhaps you need a Solon; perhaps your people should be better educated — perhaps indeed both things are necessary".

We have seen that the Greek idea of law is closely connected with the city-state, and it is plain that the city-state is a nodal point of religion. Greek religion is exceedingly complex, containing many different elements; and ancestor-worship is not nearly so prominent in it as in Roman or Chinese religion. But it has features not — in any discussion of law — to be overlooked, which tie citizen, family, clan and state together, and which lie deep in the Greek mind. It seems to have been solemnly effective to adjure a person by the "gods of his fathers", and the state also had the "gods of its fathers". A man belonged to the state because primarily he belonged to a tribe or clan, subdivided into brotherhoods. When a boy came of age he was formally admitted into a brotherhood, with religious rites, and it was on this basis that his citizenship was recognized. The official centre of the Greek state was a public hearth-fire, never allowed to go out, which was a symbol of the continuity of the state as a whole.

Each family, in turn, had its own hearth (in later times, perhaps replaced by a lamp) and an altar to the paternal gods, before which light words and actions were avoided. When a colony was sent out from the state, coals from the state fire were jealously carried to it, and kept aflame, so that the continuing fire might be cherished in the daughter state. The Greek saying, which has passed into modern languages, "carrying on the torch of life", was not an idle metaphor. The whole tillable area of a Greek state was divided into lots of scrupulously equal value, each of them sufficient to maintain a family. Greek law is shot through with references to the perpetuation of these lots and these families, and so to the perpetuity of the state. Hence the thousands of references in Greek literature to inheritance, to genealogy, to the solemnity of adoption when a marriage was childless. The family fire must never go out; the plot of ground which sustains the family is guarded by the most rigorous laws of inheritance. (The law of Gortyn, preserved in a large extant inscription, is most explicit.) The other side to this is the constant dread of over-population. The reason that we know so much of Greek colonies, from Russia to the Straits of Gibraltar, is that a colony was always a deliberate state enterprise, attended with solemn rites and well-kept records. Two things in Greek morality which shock us — the "exposure" of many children, and homo-sexuality — have their origin in the deep-seated desire for continuity — continuity of the state through its constituent members, the heads of families, and continuity of the way of life in these families from time immemorial: such a precious trust was not to be endangered by an overplus of mouths — revolutions begin in hunger.

Plain as the Greeks tried to make their law, in statement, they recognized that its foundations were bafflingly difficult, if not contradictory, postulates. One of their early thinkers said: "From the unharmonious comes harmony", and again, "The harmony which is hard to understand is fairer than that which is patently clear". These expressions may seem figurative, but the Greeks realized how metaphorical all language is, and that at times only description, not definition, may be demanded. Hume and other eighteenth century thinkers analyzed society into absolutely independent units, and were then pathetically unable to glue their manufactured ghosts into a living community. The Greeks, on the other hand, whether through the happy accident which led them to base all their analyses of humanity on the *polis*, as the lowest safe unit, or by a felicitous psychology (their psychology has often been censured), saw that such words as

*self* and *individual* really involve "fictions" — to use a word which lawyers understand. At times all men have talked of the "I" as though it were independent of other "I's", or as though the "I" were indivisible. But these are only rough and ready assumptions which enable us to proceed to further thought. Indeed one cannot proceed either in mathematics or in biology without fictions and assumptions. If any one objected to a Greek that thought based on these fictions must be all one grand make-believe he answered blandly: "Life is like that". The reader who is not familiar with Greek discussion may be referred to the chapters in Samuel Butler's *Life and Habit* (1877) entitled "Personal Identity", "Our Subordinate Personalities", "The Assimilation of Outside Matter". No wittier pages were ever penned, and none more penetrating into the very foundations of human thought. Any lawyer who reads them is delighted to find that "fictions" are not a monopoly of his profession.

Nothing that we know is more eloquent or more profound than what the Greeks have said about liberty, liberty of the individual and liberty of the state. On the other hand almost every page of their literature contains a hint, at least, of the restraints of law. Man being what he is — restless, curious, inventive, and above all passionate — is everywhere confronted with restrictions and reminders of his mortality. Life, therefore, is endless conflict; and it is not strange that a Greek laid it down that the highest form of literary art is tragedy, an artistic distillation of conflict. In Athens the performance of tragedy was a religious state festival. More than thirty of these Athenian tragedies have come down to us in complete form, and many of them contain allusions to the Greek conception of law. To be sure, if we want to catch the very atmosphere of the Athenian law-courts, to learn the details of how evidence was submitted, and the sort of pleas that were made on both sides, in cases of assault and battery, of theft and fraud and breaches of commercial agreement, of murder and adultery and treason, we must read the Attic orators (the speeches of ten of whom are extant). But that sort of inquiry would lead us into a multitude of single cases. It is better to look at one tragedy, where the discussion is, in the nature of things, more general, and where, we can be sure, since the play is part of a solemn religious ceremony, that the discussion reflects the serious view of the citizen body.

In Sophocles' tragedy *Antigone* three aspects of human existence are powerfully stated: the soaring freedom of the human soul, the omnipresent activity of the state, and the holiness of

law — which governs individual and state alike. The story turns on a man's rebellion against his state, in legendary days, his death and a decree by the tyrant ruler forbidding the rites of burial to his corpse. Such a decree is of course shocking to a Greek audience, but it is almost equally shocking that, even in legendary times, a citizen should have fought against his own city. So, in the mind of the audience, there is a balance of judgment from the very outset. Early in the play there is a Hamlet-like outburst from the chorus on the glory and greatness of Man; but mingled in that outburst are allusions to the state, in which Man has his life, and to law, which is the breath of his life. I quote it in Jebb's prose translation:

Wonders are many, and none is more wonderful than Man: the power that crosses the white sea, driven by the stormy south wind, and making a path under surges that threaten to engulf him; and Earth, the eldest of the gods, the immortal, the unwearied, doth he wear down, turning the soil with the offspring of horses, as the ploughs go to and fro from year to year.

And the light-hearted race of birds, and the tribes of savage beasts, and the sea-brood of the deep he snares in the meshes of his woven toils, leading them captive — Man, excellent in wit. And he masters by his arts the beasts whose lair is in the wilds, who roam the hills; he tames the horse of shaggy mane, he puts the yoke upon his neck, he tames the tireless mountain bull.

And speech and wind-swift thought, and all the moods that mould a state hath he taught himself; and how to flee the arrows of the frost when 'tis hard lodging under the clear sky, and the arrows of the rushing rain; yea, he hath resource for all, without resource meets he nothing that must come; only against Death shall he call for aid in vain—though from baffling diseases hath he devised escapes.

Cunning beyond Fancy's dream is the fertile skill which brings him now to evil, now to good. When he honours the laws of the land, and that justice which he hath sworn by the gods to uphold, proudly stands his city, but cityless is he who rashly commits what is not fair and right. Never let such a man stand beside my household fire, never let me share his thoughts.

One sees here the fusion of discrepancies and opposites: life and death, liberty and restraint, the state which has its life and well-being in the good conduct of its individual members, and the individual who is said to be without a state if he behaves evilly. Law is what holds everything together, and its emblem is the sacred fire, which burns forever on the family hearth and in the state hall.

The great conflict in the play is that the sister of the dead man disobeys the state decree and performs the rite of burial.

When asked how she dared to transgress the edict of the ruler she replies:

Yes, I dared, for it was not Zeus who proclaimed that edict; not such are the laws ordained for men by that Justice which dwells with the gods of life and death; nor did I deem that thy decrees had such force, nor that any mortal could override the unwritten and unfailing laws of heaven. Those laws are not a thing of today or yesterday, but always and forever they stand, and their origin no man knows.

How then can a man make his way in a world of such contrarities and contradictions, how can he search out the unsearchable mysteries? The answer to this question is glanced at in the chorus I have quoted. "Speech and wind-swift thought", put at the very apex of human qualities and capacities, are the reflection of Man's power of reason — a power which no Greek ever hesitated to say raised Man to the level of the Divine. Through reason Man could discover the Divine purpose. If a man transgressed the law unwittingly his ignorance was no excuse, and retribution was sure to follow — if not for himself then for his children, his neighbours, and the state as a whole. Ignorance indeed, to the Greek mind, was the sin of sins. The state therefore had to educate its members, not only in childhood at school, but in every possible way through the whole of life. Our word *school* is the Greek word for *leisure*, originally: the idea being that education had nothing to do with the hurry and scurry of making a living, but wholly to do with the quality of life, the test of that quality being how a man spent his spare time. Hence the state continually concerned itself not only with gymnastics, athletics and health generally, but also with literature, music, sculpture and architecture. The Greeks had the same word for things which are ugly and things which are bad, and the same word for loveliness and virtue.

It has required effort for modern men to understand fully what the Greeks were like; and the difficulty is not lessened by the glibness with which we use such Greek words as *economic* and *democratic*. Further, we continually make divisions in our speech and in our thought which they did not make, and which, if they had heard, they would have regarded as quibbles. For example, we speak of Church and State. To the Greeks religion was an aspect of the state, and the state was an aspect of religion. We speak of education and life, and often we qualify them with very distinguishing terms, such as *theoretical* and *practical*. To the Greeks this would have seemed mere hair-splitting — every man knew that life was education, and education was life. In a

momentary abstraction the individual could be considered apart from society, but the separation was regarded as the thinnest abstraction. If we remember such things, some of the puzzles about Greek law disappear. For example, it may seem a contradiction that, even while talking of codes of law being drawn up in historic times, they insisted that these laws had existed for all time, and had been ordained by God. There were debates about this in ancient times. Sooner or later in the debates some one would remark that the contradiction was more apparent than real: if the law or code were good, just and sensible, it dealt with a relationship or validity that had always been there, which man did not make, but only discovered. If he were a wise man, a Solon, he would be more likely to discover it. Again, when new conditions arose, requiring new laws, the legislator was merely discovering justice in a new aspect: essential justice was eternal. The discovery might be a novelty, but not the thing discovered.

Another matter may puzzle us: since law bound them so closely to their small communities, how could the Greeks attain so completely as they did to a conception of interstate law? Well, there are several things to be remembered.

In the first place they were largely engaged in trade, and their trade carried them far beyond their state borders. Commerce, bottomry, inter-state banking all required agreements of wide acceptance. In a court case that has come down to us we read of an agreement made on a ship, between a trader from Massilia (Marseilles) and another Greek. A dispute over the agreement arose while the Massiliote ship was lying at Cephalonia, in the Adriatic. The authorities in that place ordered the ship to sail on to Athens, since that was its original destination, and have the case tried there — which was done. In the whole discussion it is taken for granted that the law is the same in the south of France, in the Adriatic and the Balkan peninsula. It is entirely a mistake to conceive of the Greek outlook or activity as parochial. I shall give a single illustration. In the eighth century B.C. they took wheat, which they found in the Nile Valley, to plant in Sicily. There the soil is very fertile, but the climate is dry, and there are prolonged summer droughts. They succeeded in breeding a drought-resisting strain. About the middle of the next century they took wheat to one of the best wheat-growing areas ever discovered, the steppe lands of southern Russia. Here the breeder had a different problem — to produce a strain which would ripen between late and early frosts. This problem also was solved. After a time Sicily and Russia rivalled Egypt itself as

wheat producers for the Mediterranean world. We have the details about these matters, the names of many strains of wheat, and their peculiarities, in Theophrastus. In another writer we have a statement about this wheat growing in Russia which seems to make it an effort of even longer range. Though the natives produced vast quantities of it, they never took to using this exotic African grass. The Greeks did not themselves farm the Russian lands. They taught the natives how to grow and harvest wheat and left them with the job. Once the trade was established the Greeks never saw the grain until it arrived at Black Sea ports. These are enterprises of considerable magnitude.

Co-operative effort was at an early stage forced upon the Greeks by the exigencies of their far-flung commerce. For one thing, piracy had to be kept down on the long trade routes. Again, in dealing with so rich and populous a country as Egypt, Greeks had to stand together. Their city Naucratis, on one of the mouths of the Nile, was an emporium used in common by nine different Greek states. In the Eastern Mediterranean they had jealous rivals in the Phoenicians, who were originally better sailors and ship-builders than themselves. In the West, Carthaginians and Etruscans, both seafaring peoples, and leagued together, long tried to close the sea-routes to the Greeks.

Religion also required interstate understandings and regulations. In common with many other races the Greeks believed that certain localities and sites were especially sacred. Thither, at regular seasons, went pilgrims, carrying costly offerings from the state to the shrine. For centuries the offerings stood there, sacrosanct and unmolested. To some sacred places carefully trained athletes were sent from all parts of the Greek world to compete at games in honour of the god. There were also competitions in music and poetry. The competitions had to be judged fairly: we never hear of the decisions being questioned. The most famous of all these interstate religious games was at Olympia, in southern Greece, held every four years, beginning in 776 B.C. (This is nearly two hundred years earlier than the Solonian Code.) Again, at any time a state might send ambassadors to consult an oracle: indeed there can hardly have been a Greek state anywhere which did not at some time or other consult the oracle at Delphi, which came to be called the navel of the world. These sacred places were sometimes under a local authority, acting as trustee for others, sometimes they were maintained by a league. Pilgrims, competitors and ambassadors travelled to and fro under universal safe-conduct. As all these arrangements went on uninterruptedly



through long centuries, even in time of general war, it is not too much to say that they had international law for their basis.

In addition to all this there were leagues of states to repel non-Greek aggressors, and there were many regional leagues to keep the peace within the conjuring states themselves, or, if war did break out among them, to mitigate its horrors. In one league a common oath was taken that, if one of its members so misbehaved that the others had to take action against it, they would not cut off its water supplies during hostilities, nor would they destroy it after it was defeated.

One can still read in many so-called histories that the Greeks were a nimble-witted and artistic people who had, however, little political sagacity, and that they lived in small, exclusive and self-regarding states, the mutual animosities of which brought their civilization to an end after a very short period. Those who first circulated such statements knew the Greeks only after their civilization had perished. We have seen that such an account of them is very largely untrue. We may wish, if we like to indulge in dreams about "might-have-beens", that the Chalcidic League of northern Greek cities had grown stronger and kept the Macedonians out of Greece. We may wish that at an earlier time the idea of a political union of all Greek cities in Asia Minor, which was fully discussed in many of them at the beginning of the Persian menace, had been consummated, and furnished the Greek world at large with a new political concept, perhaps that of representative government, while their veneration for the principle of law was fresh and strong. But it must not be forgotten that this veneration was so profound and all-pervasive because of their small city-state; and we have seen that this way of life grew up in a dark and troubled period covering six centuries. Such a way of life could not easily be given up: nor can we fairly complain of the contribution it has made to the sum-total of the culture of the world.

A discussion of law is to be found in the earliest Greek literature extant. In Homer the words commonly used are *dike*, usually translated *justice*, and *themis* ("what is laid down" — tinged with the idea of divine dispensation). Another term used is *aidōs* — difficult to translate, because it involves several notions: *shame*, *self-control*, sometimes what the Jews called *the fear of God*. Already, then, several ideas are intertwined: man's social relationship, which is part of the general order of things; an in-dwelling conscience which is both a restraint and an awareness of the eternal and immutable.

The idea plainly grows more complicated, not simpler, as we move on into the historic period. For one thing the notions about the gods themselves have been changing, and all through the records a purification of religion is going on. True, there is a growth of scepticism, and it is apparent that religion sits more lightly on Greeks than on many other early peoples — they never had any development of a priestly class. At the same time many of them insist that changes in religious outlook are merely a change in man himself, not a change in fundamental truth.

Along with this development went many others. From an early period the Greeks were explorers and observers of other ways of life than their own. This gave balance and a certain universality to their thinking. Again, their study of mathematics and science covers a long period. No modern man has given a better description of the scientific process than Liebig, the German chemist: "We observe and experiment, and gradually establish a fact; we generalize about many established facts, and finally are able to make a mathematical statement about a principle". Now, the Greeks stated and practised this for many generations. If we men can discover it we find that law runs through the entire universe. The poets from Hesiod to Aeschylus stoutly apply the same principles to human conduct, and to the problem of sin and evil in the world. The Jews claimed to be a chosen people having a law which had been revealed to them alone, by God. The Greeks insisted that they had discovered law and the nature of the gods for themselves, but mused about the mystery of it all. Herodotus says time and again that the Persians, for all their cleverness and greatness, could not understand what the Greeks meant by law. Euripides says that no one but a Greek could understand it. Thucydides, perhaps profoundest of all Greek political thinkers, regards a wide-spread acceptance of law as the only basis of a stable society, but fears that, with the break-up of the Hellenic world he has known, it will be a long time before other men attain to such a conception.

In the historic period the word used for law is *nomos*, which had for one of its original meanings *custom*, a sense in which the Homeric word *dike* had also sometimes been used. Pindar, who was a traveller, says, in one of his fragments, "Custom is everywhere king". Herodotus, a much wider traveller, says that Pindar states a fact. He relates that travellers from India, meeting Greek travellers in the capital of Persia were shocked to learn that Greeks burned the bodies of their dead parents: the shock was mutual when the Greeks learned that in India it was the custom to eat dead parents.

A word closely connected with *nomos* is *nomisma*, which means "current coin", and the latter word throws a light on the former. The coins of a Greek state bore the emblem of its tutelary deity—for example, the Corinthian coins a horse for Poseidon, the Athenian an owl for Athens. The workman who struck the coin and the state which issued it, were in effect swearing by the divinity most holy to them that the coin contained a certain weight of precious metal, and these oaths were well kept over a long period. By 650 B.C. barter in kind began to give way to monetary trade in the Greek world. In coinage, also, there was a certain internationalism from the beginning. Miletus and Samos, at the eastern end of the Mediterranean world, were among the first states to engage in distant sea-borne trade. They were rivals, and it happened that they had taken over from the East different systems of weights and measures. Each became the head of a wide-spread trade alliance. Within each league, though coins varied in form from city to city, they were all of the same weight in a given denomination, and so could have a wide circulation. Presently a mighty impetus was given to this tendency. Athens, one of the later states to engage in distant trade, at first followed Milesian coinage, which was one-fifth heavier than the other. But in 594 B.C. Solon deliberately lightened or devalued Athenian coinage by exactly that amount. He had two objects in view: one was to abolish one-fifth of the internal debt of Athens, the other to throw open the markets of the Samian-Corinthian alliance to Athenian currency. After that Athenian coinage was never tampered with, and its "owls" were current everywhere. They have been dug up in every part of the Mediterranean world, in the valley of the Seine, in Russia and the far East. And Athenian commercial law was almost as widespread as its coinage.

That it is not fanciful to relate the sanctity of law to the wide security of trade can be seen in an extant speech of Demosthenes. He is pleading in behalf not of Athenian citizens, but of foreigners, resident in Athens for purpose of trade. A group of these had made a joint loan to a ship captain sailing to Egypt for wheat, the condition of the loan being that the ship return to Athens with the full cargo. Now, after securing his cargo the captain had landed it in Rhodes, and on returning to Athens pleaded an "act of God"—he said a storm had driven him into Rhodes. Demosthenes concludes his speech to the court thus:

Do not disregard the fact that in deciding this single case you are legislating for the whole grain trade. Numbers of men who are engaged

in trade by sea are standing in this court, waiting for your decision. If you maintain the validity of contract and agreement, money lenders will be more willing to make advances to merchants, and your whole trade will be stimulated.

\* \* \*

It will have been noticed that periods we have mentioned, when modern men turned to study of Greek law, were times of crisis. This was so in the barbarous Thirty Years War. In the eighteenth century Frenchmen pondered the decay of Portugal and Spain; and exactly thirty years before Gibbon conceived his idea of writing *The Decline and Fall of the Roman Empire* Montesquieu had published his *Considérations sur les causes de la grandeur de la décadence des Romains*. In the nineteenth century it was Englishmen, largely — despite their frequently alleged complacency — who carried on the tendency. Of them indeed it has been said:

I deem an Englishman a Greek grown old,  
The oceans past, and many a watchfire cold.

We men of North America have little to learn from the Romans, precisely because we are so like them — good engineers, good organizers of material things, and never daunted by bigness. But may we not have much to learn from the Greeks, who were so unlike ourselves? For centuries they believed in and practised absolutely free trade, both on economic grounds and because discrimination begot hatred. They feared and distrusted bigness, because big things tend to aggrandize power, which is a corrupting force. They did big things, as we have seen, but they preferred to do them co-operatively, preserving individual liberties and local idiosyncrasies. They also had a dreadful fear of cluttering up a legal code with a multitude of regulations. They saw indeed that law could *never* be respected in such circumstances. Law must state the broad and fundamental principles, and leave it to every generation of men to apply these principles to particular sets of affairs and transitory needs. All through the historic period they were simplifying and codifying their laws, inscribing them in public places, and making them so plain that any man who could read could understand them. Not least, they understood the importance of widening the validity of such principles by interstate understandings.

At the beginning we noticed that the Romans at two different periods saw what *they* had to learn from Greek law. A very late Roman code, the Justinian, was drawn up in the sixth century A.D. Except its last part, this is a Latin document, but the

framer prefaced the code with a quotation from Demosthenes, and thought it wise to leave the quotation in the original Greek, changing only one word. Says Demosthenes:

The intention and purpose of law is justice, all loveliness and general advantage; and when a law has been discovered it is revealed as a common prescription, fair and alike for all men — this we call *Nomos*. Universal obedience to it is right and seemly for many reasons, but especially because it is a treasure that has been found, and a gift from the gods [in the Justinian text *God*], which is accepted by men who are wise; it redresses and corrects mistakes and shortcomings, whether they have been deliberate or unintentional; and so it becomes a solemn compact throughout the state, according to which all men in the state rule their lives.

Living in France, in the tumult of the Revolution, Wordsworth asked himself what society was. At fourth hand, so to speak, through Beaupuis, disciple of Montesquieu, he caught the skirts of some of these ideas.

What is a State? The wise behold in her  
A creature born of time, that keeps one eye  
Fixed on the Statutes of Eternity.

In the *Ode to Duty* he deals with the ethics of it — with law as the stern yet friendly guide to individual conscience and virtue, though the individual remembers, for his comfort, that law runs through the universe:

Thou dost preserve the stars from wrong  
And the most ancient heavens through thee are fresh and strong.

In his first volume of *Historical Jurisprudence* (not the volume on the Greeks) Vinogradoff twice refers to Wordsworth, and gives two long quotations from the *Prelude* (Book XIII). It is striking that he should cite Wordsworth, alone of English poets, especially as he seems not to have known the full story of Wordsworth in France. But it is earlier books of the *Prelude* which give us an insight into what happened in the poet's mind. The ninth book, particularly, links Wordsworth — who describes himself as at first a raw onlooker in the early days of the Revolution, utterly ignorant of government and social structure — with eighteenth century French discussion. Mere chance acquainted him with Michel Beaupuis, who was eminently fitted to instruct him. Pointing to the miseries of the common people, Beaupuis tells him they are outside society: there is no law in France. The king issues mandates merely; and between king and third estate are the nobles and clerics, immune from taxes and military service, and naturally siding with the king as the origin of their

privileges. With all this he contrasts "Ancient Story" (the context shows that Greek history is meant). The poet continues:

Oft in solitude  
With him did I discourse about the end  
Of civil Government and its wisest forms.

He retells the story of Dion, schooled under Plato in Athens, setting forth to free Sicily from tyranny, and adds simply:

So Beaupuis (let the name  
Stand near the worthiest of antiquity)  
Fashioned his life.

Wordsworth tells how he himself gradually saw into his friend's instruction:

Hatred of absolute rule, where will of one  
Is law for all, and of that barren pride  
In them who by immunities unjust  
Between the sovereign and the people stand,  
His helper and not theirs, laid stronger hold  
Daily upon me.

He and Beaupuis looked forward to the day which would abolish

edict of the one or few;  
And finally, as sum and crown of all,  
Should see the people having a strong hand  
In framing their own laws.

Not in Milton himself, fierce republican, lover of liberty and apostle of Reason though he was, is there a passage on law so explicit, so bare of irrelevance, so modern and at the same time so Greek, as this rather prosy ninth book of the *Prelude*. (Not that the subject is necessarily prosy: one of the most poetical passages in the entire work, Book XI, lines 105ff., is based on his meditations on law.) Though composed in Wordsworth's earlier period the poem was not given to the world until just one hundred years ago.

Eighteen years afterwards, in 1868, Matthew Arnold published an essay on *Democracy*, soon followed by one on *Equality*. He bases himself on certain Greek ideas: the State makes possible the highest self-realization of the individual by making individuals really members of itself, educating them on a high level, treating them equally, and aiming at a life which is the expression of Reason. He shows that the French during the previous century have worked out some of these ideas, and expressed them in the *Code Napoléon*, which has now become the law in several other countries. From all this Arnold draws some lessons for his fellow-countrymen and for North Americans. He says pointedly that his remarks are not a "disquisition on law" —

that he speaks of law because his interest is in civilization. And he quotes from a panegyric on Athens, uttered by an Athenian, when Athens had lost her high estate:

The name of Greeks seems to stand no longer for a race,  
but to stand for intelligence itself.

Many years ago a lawyer said: "Never yield to the temptation of *accepting the present*, it is a great jailer of Man's mind". It is, I believe, obvious that the modern men of the last three centuries whom I have cited, as coming under the influence of Greek thought, did not *idolize the past*: every one of them looks forward. As a final example I cite that superb scholar, Gilbert Murray, who wrote exactly fifty years ago — a time of intense nationalism, and a time that was big with future disasters:

There is — not perhaps in every country, but in most countries of Europe — a small party which does not believe in the supra-normal rights of its own countrymen, which values goodwill more than glory, and judges of national honour by standards approaching those by which it judges of personal honour; which believes in international morality, in the co-operation of nations for mutual help, in the ultimate Fraternity of Mankind.

A poor and despised class, these, in every community — dreamers, sentimentalists, doctrinaires, hypocrites, traitors, 'friends of every country but their own' — they have at least one advantage over the ultra-patriots. It is an old rule of logic that 'truth by truth is never contradicted.' But the 'patriots' of one country by the 'patriots' of every other are contradicted always, in every item of their creed. Those who are called 'friends of every country but their own' are at least friends of almost all humanity, and in practice are often the best friends of their own country also. And they agree with one another. In every country of Europe they are pleading on the whole for the same causes and upholding the authority of the same tribunal — the disinterested judgment of each man's conscience in the first place; and, as a Court of Appeal, whenever it is attainable, not the voice of one class, not the voice of one nation, but the disinterested verdict of civilized Humanity.

Vinogradoff says that the Amphictyonic League (which was the most ancient of all Greek leagues) "might be regarded rightly as an embryonic League of Nations". It is not an accident that in our day no men have done more to promote such an idea than those accomplished Greek scholars, Sir Alfred Zimmern and Gilbert Murray.