

Paper #1

HELLENIC PHILOSOPHY OF LAW: ESSENTIAL TERMS

John Witte, Jr.
Darrell J. Stremler
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A General Introduction

It may rightly be questioned whether the title an 'Hellenic philosophy of law' is proper. For there never was a set of laws or a constitution recognized by all the people of the Aegean as the legal order which would, then, deserve the title 'Greek law'. The Aegean was an heterogeneous mixture of races, tribes, and families, and these social groups organized themselves into independent, and sometimes hostile, poleis, each with its own laws and socio-political institutions.¹ In view of this cultural diversity, is it possible to speak of an Hellenic Greek law, and, still further, of an Hellenic philosophy of law?

One may answer the former question in the affirmative when he recognizes that certain common conceptions and assumptions held by all Greeks outweigh the aforementioned differences. First, all Greeks were aware of a number of mores and institutions that were peculiar to them as Greeks and bound them together as a single group overagainst the barbarians.² The Greek/barbarian distinction was dominant throughout Hellenic philosophy and literature. Only after the Macedonians had conquered the Aegean and destroyed its insular character, and after Stoic and neo-Platonic ideas of universal rationality had grown strident, was the distinction between Greek and barbarian supplanted first by a 'pan-Hellenism' and then by a 'cosmopolitanism'. Second, the ideal of the polis as a way of life, as an integration

of men following their natural inclination to bond socially, as the highest embodiment of natural demands for achieving justice and avoiding anarchy, was common to all Hellenic Greeks. (And thus any civilization that attacked the Aegean, as, e.g., the Persians and the Macedonians-people who clung to an oriental political ideal of absolute monarchy-had to face a group of united Greeks, who had put aside their petty conflicts to save the Aegean, to save the ideal of the polis.) Third, the Greeks worshipped certain common deities, particularly those of the Olympian and Orphic cults, in addition to their provincial, local, and familial deities. Fourth, all Greeks held certain basic approaches to law, certain legal methods and legal terminology in common. Such commonalities, we may argue, furnished the Greeks with a unified understanding of law.

The subsequent question we may ask, given the assumption of some form of law we have called Greek law, is: may we rightly speak of a philosophy of that law? Here again we answer in the affirmative. But we must immediately note that the Hellenic philosophy of law reveals a definite historical development. Early Hellenic civilization remained undifferentiated and thoroughly under the sweep of pagan mythology. No differentiation of political, cultic, and social functionality was recognized, and law qua legal system was unknown. And thus a philosophy of law per se was impossible. Yet early Hellenic Greeks were aware of constancy in the cosmos, of law-bound patterns in nature, of

law-bound human relationships-in short, they saw the centrality of law in the world.³ The earliest seers and poets identified a casual relation between the actions of men and the blessings or disasters which befell them and their communities. They suggested that the gods of Olympus brought the forces of nature to bear upon mankind in response to his reactions, and therein lay the source of the lawful pattern. Slowly, the poets pushed the Olympians into ~~obsolence~~ and began to speak of an immanent law in human events. While earlier, all law was attributed to the functions of the deities themselves, the later poets depicted deities who were increasingly dependent upon immanent laws within human society to carry out their functions. Soon philosophers began to speak of an immanent law not only in human communities, but throughout the entire cosmos. Comcomitant with their recognition of a distinction between laws in human society and in the rest of the cosmos, the Greek thinkers also noticed varieties of human law and of non-human law. Thus by the end of the Hellenic period, philosophers diligently strove to give a rational account of and rationale for these many types of law.

This historical development of the philosophy of law, which we have discussed only superficially above, is clearly evident in the altered meanings of Greek words used to describe law, justice, legality, etc. Although the meanings of these words alter from individual to individual, their semantic changes, in the course of the Hellenic period,

illustrate the aforementioned genetic development of Hellenic philosophy of law. We now turn to a discussion of these individual terms.

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Terminology

Themis

Because early Archaic (c. 750-600) Greek society remained undifferentiated, it is not surprising that the early word 'themis' is not found in exclusively legal contexts, but also is found to play significant roles in what we now know as the distinct areas of cosmology, theology, politics, personal conduct, philosophy, etc. The word 'themis' is derived from a stem meaning 'to set', 'to place', 'to establish'. In the Iliad and the Odyssey of Homer, Themis is deified as the wife of Zeus, the mother of, inter alia, Diké and Eunomia (Iliad 15.87-95, 20.4; Odyssey 2.68-69). She is a permanent, immutable goddess in the cosmos, an integral part of the social group.⁴ The function of Homer's Themis in the cosmos is not clear, but she certainly is essential in the organization of human society. For Themis is essentially Homer's deified embodiment of all the many cultic practices, customs, and conventions-of all the themistés which previously had served as the social bond in Greek culture. Thus Themis is essential for constituting the rights, prerogatives, and obligations by virtue of which a king such as Agamemnon holds power. Via Zeus, Themis gives the sceptre and themistés to the king to guarantee his position and power in society (Il. 2.205-6).⁵ And because she is the embodiment of custom, Themis stabilizes the social and political order. The

eminent British archeologist and anthropologist Jane Harrison summarizes Homer's depiction of this relationship between kingship and custom with these words:

Out of many dooms, many public opinions, many judgements arose the figure of one goddess. Out of many themistés arose Themis. These themistés, these fixed conventions, stood to the Greek for all he held civilized. They were the bases alike of his kingship and democracy. These themistés are the ordinances of what must be done, what society compels; they are also... the prophecies of what will be in the future; they are also the dues, the rights, the prerogatives of the king, whatever custom assigns to him or any other official.⁶

Because she embodies custom and convention, Homer's Themis also shoulders the two responsibilities of convening and dissolving the agora as well as presiding over the feast (Il. 20.4-6, Od. 2.68-69). For Themis is the very embodiment of the customs that make such interactions possible. She is the very spirit of the agora and the feast; in fact, she is barely distinguishable from these social gatherings, since the gatherings themselves are customs. Themis is the social imperative, the collective conscience, and the force that brings men together to these gatherings.⁷ Occasionally, the goddess takes on the reduced form of specific rules of social behaviour, or rules and principles on which judicial verdicts are based, or private claims that are authenticated by a public verdict and thus, recognized as a proper part of the established social order (Il. 1.237-9, 9.32-33, 23.581-5, Od. 3.45). On the whole, however, Homer's Themis remains the

deification of human conventions, cults, and customs in the widest sense. Thus she undergirds the whole civil life of the Greek people.⁸

That Homer assigns Themis to the revered position of the wife of Zeus and of the mother of Diké and Eunomia indicates the enormous import of custom, convention, and cult in early Hellenic Greek culture. As the wife of Zeus, Themis becomes essential for Zeus' divine task in the cosmos, and more particularly in human society. This task of Zeus is one of apportionment and allotment of status, privilege, and province to each god and to each man (Od. 6.188). This task, however, is not original with Zeus; it originates with a more ancient deity, Moirá, Fate. Moirá is the embodiment of Necessity and Justice, a blind automatic force in the universe that sets order to the elements, to the creatures, to men, and to the gods.⁹ Zeus, as it turns out, gains the highest power of apportionment from Moirá.¹⁰ [Later literary figures, such as Aeschylus (Eumenides 1.891), make Moirá the sole will of the power of Zeus, who then becomes the sole dispenser of fate and the upholder of the provinces or spheres of power.¹¹] It is while fulfilling this task of apportionment to men that Zeus pays particularly close attention to the task of his wife Themis. All apportionment of power, privilege, and status to a particular people has to be done with a keen eye to their peculiar social customs and conventions, and thus to Themis. It is only with such an

integration of the functions of Zeus and Themis that justice-Diké, in a limited sense-can be done, and that an harmonious society-Eunomia-will result. And thus the close tie between apportionment and custom, between allotment and convention, is symbolized in Homer as the marital tie between deified embodiments of apportionment and convention, viz., Zeus and Themis. And, furthermore, the justice and peaceful society that such an union between apportionment and convention engender is limned in Homer by Zeus' and Themis' begetting of daughters Diké and Eunomia. Homer's description of the marriage of Zeus and Themis, and their begetting of Diké and Eunomia, is his explication of the cause-effect relation between the union of custom and apportionment and justice and a placid society.

Although the term 'themis' is found in greatest concentration in Homer, it can be found in the works of other literary figures of Archaic Greece as well. The second of the three great early Archaic poets, Hesiod, also assigns the various themistés to the auspices of a single goddess Themis. But Hesiod's Themis has an even more basic and more comprehensive function than the Themis of Homer. In the Theogony (135), Hesiod portrays Themis as the child of Earth (Gaia) and Heaven (Ouranos), born even before Chronos and hence older than the entire Olympian generation of gods. Only later does she become Zeus' wife (Theog. 901-2; Works and Days 256) and

mother of Diké and Eunomia. And thus, as Harrison puts it, "she is the substratum of each and every god, she is in a sense above and below each and every god, but herself never quite a full-fledged deity."¹² And because she antedates the Olympians and men, Themis' function broadens to embody conventional lawful and just patterns of nature generally in addition to the narrower customs and conventions of human society. In Hesiod, we find the broadest meaning of 'themis'; the word takes on an ever more restricted meaning thereafter. As literary figures begin to depict a less factious group of Olympian deities, gods who exemplify greater morality and justice, 'themis' takes on a meaning of what is not so much customary or conventional as morally incumbent.¹³ In Prometheus Bound (209), Aeschylus assigns Themis, the goddess, to Thebes and Delphi where she exercises an oracular function. Men consult Themis on matters of morality and social justice.¹⁴ After the sixth century, when legislation displaces the previous legal function of custom, the word 'themis' grows quickly obsolete, and such words as 'diké' and 'nomos', which embody the different meanings of 'themis', rise to parlance.

Diké

We have already encountered Diké as the child of Zeus and Themis in Homer and in Hesiod, and for expedien-

cy we translated 'diké' as justice. An expansion of this definition is now in order.

The word 'diké' is ubiquitous in Hellenic literature, yet a basic understanding of the word is stymied by its broad range of meanings in different authors. There are two diverse uses of 'diké'. One group of authors applies the word to narrowly legal situations in human society. Another group uses the word to describe the interactions of elements and forces within the cosmos. Thus 'diké' has parlance in cosmology and in, what we may loosely call, jurisprudence. And within these two applications of the word a number of auxiliary meanings are evident as well.

'Diké' is derived from the Greek word 'deik', a word denoting a 'showing' or a 'pointing out'. From this root there has developed simultaneously (not consecutively) two independent meanings of diké.¹⁵ On the one hand, 'diké' means sign, mark, characteristic behaviour¹⁶; on the other hand, it means boundary, settlement, due share.¹⁷ In Homer (Il. 16.387-88, 18.508, 19.180, 23.542) both meanings are found. Yet when Homer deifies 'diké', the goddess Diké seems clearly to embody only the second meaning of 'diké', viz., that of legal settlement, of legal process and order (Il. 20.4; Od. 2.68-69). Unfortunately, the dearth of references to the relation between the human legal process and the function of the goddess Diké in Homer makes it difficult to see why

Homer deifies diké. It can only be noted that diké, like themis, is permanent and immutable in the worlds of Homer's epics, and that its main import lies in the legal affairs of human life.

Far more significant is Hesiod's account of 'diké'. At the end of the Theogony (135), Hesiod introduces Diké as the daughter of Zeus and Themis. In a subsequent poem the Works and Days (1-382) Hesiod divulges a pregnant understanding of the word 'diké'. Prior to his writing the Works and Days, Hesiod, the commoner, had suffered much from the rapacity of the dominant Eupatrid aristocracy. In addition, he had discovered that his brother Perses had connived with the aristocratic judges to deprive him fraudulently of a lawful inheritance. Hesiod viewed this social pathology, this hybris, as symptomatic of a justless society in which "might makes right."¹⁸ Thus his dual aim in the Works and Days is to criticize this hybris of the Eupatrid aristocracy, which he readily equates with the wrongful gain of economic goods, and to establish proper rules of socio-economic intercourse and the legal process necessary to enforce these rules.¹⁹ This legal process Hesiod calls diké.

A number of auxiliary uses of 'diké' in the Works and Days illustrate Hesiod's general understanding of diké as legal process. These include diké as:

a) claims or rights which define the place a person occupies within a community

- b) the verdict by which a claim is validated
- c) the session of a law court at which verdicts are given²⁰
- d) a law suit
- e) a judgement of any kind (not necessarily legal).²¹

Hesiod ties these various understandings of diké as legal process into his description of a divine Diké. This goddess is portrayed as the mysterious, silent divine who judges the affairs of men. Through Zeus, her father, she exacts immediate and violent revenge for her maltreatment by injustice, by hybris (W&D 238-247). Every unjust deed, says Hesiod, hurts Diké, and Zeus always brings revenge and retribution for such injury to his daughter through his earthly judges.²² Thus Zeus, the dispenser of privilege, status, and province, also dispenses punishment on any man who chooses the road of injustice, of hybris.

We see, then, that 'diké' in Hesiod is at once a concrete divinity and a concrete human judicial verdict of retribution. By diké, Werner Jaeger explains, "[Hesiod] means the concrete judicial verdict of human justice from which his poetic imagination moves to the idea of a beneficent, benevolent, awe-inspiring Divine."²³ The human judicial verdict cannot exist without this divine being, nor can the divine exact retribution for injustice without the machinery of the human legal process. The acts of retribution for hybris by the goddess and the temporal

judge are intrinsically meshed together. If an unjust man escapes the verdict of the human legal process, he escapes all retribution.

The great early sixth century B.C. constitutional reformer, Solon, was, like Hesiod, much perplexed by the excessive hybris of the Athenian oligarchic aristocracy, by the beleaguered state of the lower classes, and by the class struggle that subsequently ensued. This is evident in the extensive number of fragments of a Solonian elegy quoted by the fourth century Athenian statesman Demosthenes in a speech On the False Assembly. Solon, however, unlike Hesiod, was convinced that the hybris of the aristocrat does not draw down vengeance on the individual alone, but drags the whole city, and each individual in it, guilty or not, along to destruction.²⁴ Because hybris causes such destruction, Solon's elegy over falling Athens issues a bitter invective against hybris and warns the aristocracy that such hybris invites inevitable retribution. His solution, like Hesiod's, lies in the establishment of a legal system for regulating socio-economic interchange. This legal process he, too, calls diké.²⁵

In view of these obvious parallels in situation and in preliminary understanding of 'diké' between Hesiod and Solon, the reader would anticipate that Solon's goddess Diké and his accompanying theology would correlate with Hesiod's. But Solon's Diké and theology take on a startling new form. Diké can no longer be hurt by the

hybris of men; she does not need the human arm of justice to carry out her decrees.²⁶ Solon's Diké has become more detached from human events and less essential; she no longer cringes in pain at the side of Zeus, nor does she need Zeus to carry out her retribution. Men can no longer defy her with impunity, for she exacts her revenge against injustice by natural (not human) procedures. Injustice is no longer met with immediate and violent retribution; the consequences of unjust deeds follow in their course, their natural course, such that no deity seems involved.²⁷ Solon's Diké has thus become the immanent justice of all human events. She has become an inevitable part of life itself. As one eloquent commentator describes it:

With increasing rationalization and intellectual refinement, Hesiod's robust and tangible goddess seated beside the judgement throne of Zeus becomes in Solon the immanent, though no less divine, principle of law in the world and in civil life. For Solon, law is not an invention of man; it is an independent law which, however men may adapt or force it,²⁸ will always triumph because it is divine.

And it is precisely because of this conception of diké as retribution that Solon berates the Eupatrid nobility for their insolent hybris. For such activity will perforce lead to the destruction of Athens.

In the latter part of the elegy, Solon calls the divided people of Athens to good order such that Diké is appeased. He tries to draw this divine Diké into the fact situation of Athens and to illustrate to the people how

pivotal she is for the city's welfare. Solon has become, says Jaeger, "a political teacher, soberly instructing and guiding his people to understand the universal laws that guide and govern the living relationships in their city by making them recognize the essential connection between the social behaviour of the citizens and the city's welfare."²⁹ With such a comprehension alone will the city see peace, Eunomia.

In Solon, then, 'diké' has become an iron law of causality within the human world, a law that governs social and political life and with ineluctable necessity maintains the balance of justice among men. Such a concept of 'diké' was thereafter woven permanently into the fabric of Athenian politics.³⁰

The Solonian concept of an immanent law within the socio-political life of the polis was, in the same generation, boldly extended by the Milesian philosopher Anaximander to an immanent law, a divine retribution in all nature. Herein, we see that diké takes on a radically new form. No longer legal process, no longer the law of retribution binding human affairs, only, diké becomes a natural law binding a thoroughly moral universe.³¹

Anaximander's cosmology can be constructed only in part from certain fragments of his work quoted in the texts of later authors. Apparently, Theophrastus, Aristotle's greatest student at the Lyceum, has included in his writings an incontrovertible text of Anaximander. Theophrastus' text

has been preserved, in part, by Simplicius, a sixth century A.D. neo-Platonist and commentator on Aristotle.³²

Simplicius' text reads thus:

Anaximander declared the Boundless to be principle and element of existing things having been the first to introduce the very term of 'principle' he says that: 'it is neither water nor any of the other so-called elements, but some different boundless nature, from which all the heavens arise and the kosmos within them; out of these things whence is the generation for existing things, into these again does their destruction take place according to what needs must be: for they make amends and give reparation to one another for their offense, according to the ordinance of time,' speaking of them thus in rather poetical terms. It is clear that having observed the change of the four elements into each other, he did not think fit to make any one of these the material substratum, but something else besides these.³³

We need not digress at this point to discuss the controversy surrounding the accuracy of Simplicius' quotation from Theophrastus and, in turn, Theophrastus' quotation from Anaximander; nor do we need to debate over the variety of ways the Greek text of Simplicius can be translated. Simply put, Anaximander's cosmology is a monistic universalistic objectivism. The arché is not a thing of the present world, but a substratum beyond the things of the cosmos, the apeiron, a quality named the Boundless. From this arché, two opposing forces emerge: 'the hot' and 'the cold' and 'the moist' and 'the dry'. While we recognize heat, coolness, moistness and dryness as psychical or sensitive object functions, or what some call qualities, the objectivist Anaximander recognizes them as elements. (The

objectivist mind tends to reify or hypostatize qualities into things.) The cosmos, says Anaximander, is ensnared in a ceaseless oscillation from 'the hot' to 'the cold', from 'the moist' to 'the dry', and vice versa. The coming to be of one element is always at the expense of its opposite. As heat intensifies, cold diminishes, as moisture spreads, dryness is eliminated. Doubtless, Anaximander could see this pattern of oscillation in his pre-theoretical experience. Each day the coolness and the wet dew of the morning dissipates in the face of the heat and dryness of noonday only to return at the end of the day.³⁴ Each year the damp coolness of the spring gives way to the arid heat of summer only to return in the autumn. Now, after theoretical reflection, Anaximander elevates these daily and seasonal patterns to a cosmic moral pattern, an endless war between the elements.³⁵ As Simplicius' quotation indicates, he sees the rise of one particular element as an offense to its opposite, and he thus conceives that retribution-diké-is in order. Hence, in due time, the opposite element will, of necessity arise at the expense of the former, for such is the requirement of the natural law of retribution, of diké. As F.M. Cornford explains this new meaning of diké within the war of the opposite: "The principle of Destiny or Justice [Diké] has set the bounds of the elemental order, and it waits to exact the penalty of every transgression. The power which presides over the physical order is moral."³⁶ Needless to

say, the concept of diké has been altered radically in Anaximander.

The evidence suggests, then, that by the middle of the sixth century, the Greek mind was theoretically aware that both human society and all of the cosmos is bound by a law of retribution, by diké. The twin theoretical formulations, in Solon and in Anaximander, of what this law is pervaded Greek scholarship well into the fifth century. Pre-Socratic philosophers, particularly Heraclitus and Parmenides, extend Anaximander's conception of diké, thereby providing for the founding of a Greek understanding of health, medicine, economics, etc. on Anaximander's conception of universal diké. More important for our purposes is the subsequent adaption of Solon's concept of diké.

The Solonian revolution of 594 B.C. had instilled in the disadvantaged people of Athens a taste for legal justice, for diké. The reemergence of a strong aristocracy, in the Peisistratid tyranny, shortly after Solon's demise, did much to offset the potential just effects of Solon's constitutional and institutional implementations. More particularly, the emergence of tyranny once again made possible the rigid and polar class divisions in Athens. Not surprisingly, then, the lower classes utilized Solon's word 'diké' as the war-cry for justice in the sense of equality.³⁷ 'Diké', as equality, however, denoted one or more of the following in the sixth and fifth centuries:

- a) that the unprivileged man should equal the privileged before the judge and before the law
- b) that each citizen should have an active part in the administration of justice
- c) that all votes are constitutionally equal
- d) that all citizens have equal right to hold office.³⁸

Among the aristocrats and statesman, however, 'diké' usually meant 'what is laid down by law' or legal process.

During the late fifth and early fourth centuries, the concept of diké moved away from its traditionally legal meaning to a broader moral importance (Note, that while the universe is moral in Anaximander, the retribution, diké, remains strictly legal). This is brought into sharp focus when we probe the semantic changes of 'dikaiosyne', a word derived from 'diké'. As the fifth century Greeks sought to explain diké, they noted that diké reaches its highest concentration, not firstly in the polis, but within a special type of human character, a peculiar arete (virtue).³⁹ At first, bravery, the traditionally superior Homeric arete was seen as dominant in a man, and dikaiosyne was made subordinate to it. The brave man was still more revered than the just man. But quickly 'dikaiosyne' "became arete par excellence, as soon as the Greeks believed they had found in written law [nomos, cf. below], a reliable criterion for right and wrong. After nomos-that is, current legal usage-was codified, the general idea of righteousness acquired a palpable content. It

consisted in obedience to laws of the state."⁴⁰ Thus diké by the fourth century had shed its narrow legal compass and had become moral as well.⁴¹

It is only with an awareness of this semantic shift of 'diké' that one can comprehend why the Plato of the Republic can speak of the analogy between the soul and the state. Dikaiosyne in the soul transcends all other virtues, putting each in its place and maintaining an equipoise of arete. Dikaiosyne is the virtue in the soul through which each arete is fully expressed and through which the individual can tailor and integrate the driving virtues of which his soul is comprised. It is only with dikaiosyne as the dominant arete that a man can recognize his place in the state and integrate with the others in his social class. This proper balance between the social classes and between the individuals in each class is the diké of the polis.

Nomos

We have before us the remaining task of dissecting out the semantic changes of the term 'nomos' from the writings of influential poets, philosophers, and statesman in the Hellenic age.

The word 'nomos' is derived from the Greek root 'nemos' (meaning a space, clearing) and, broadly considered, denotes distributing, dispensing, quartering, much in the sense of the Latin word 'provincia, -ae'.⁴² From

this basic meaning springs a broad range of, what appear to be largely independent, meanings. Yet one strand of commonality draws these independent uses of 'nomos' together. This conceptual strand is the peculiar Greek understanding of the relation between nomos and order. The philologist M. Ostwald summarizes this understanding succinctly: "Nomos" in all its uses describes an order of some kind, which differs from other kinds or order...in the connotation that this order is or ought to be regarded as valid and binding upon those who live under it."⁴³ One must bear this fundamental understanding of 'nomos' in mind as he studies the various meanings assigned to 'nomos' by the Hellenic authors.

'Nomos' is devoid of all political and judicial sense in the Archaic Age (c. 750-480). The legal and juridical descriptions of distributing or dividing are at this time customarily encapsulated in such a term as 'thesmos'. Archaic writers prefer to use the term 'nomos' in a social or theological context.

The earliest writers use 'nomos' to describe an order of living, a way of life. In Hesiod, 'nomos' designates that behaviour which is becoming of all creatures, both men and animals (W&D 276-280). Such a behaviour, says Hesiod, is god-given, but willingly accepted as valid by creatures. And the particular deity that dispenses nomos is Zeus, who, as we have already seen, also dispenses privilege and status—a task inherited from Moirai, Fate.⁴⁴ Zeus

ordains for men that they shall lead a nomos with diké (in the special Hesiodic sense of judicial verdict) or order, but that beasts shall live without diké and thus prey upon and devour one another.⁴⁵ Later writers illustrate this Hesiodic understanding of nomos. It is nomos that men and women unite and beget children (Aeschylus, Agamemnon, 1207), that he who sheds blood shall have his own blood shed (Aes., Choephoroe, 400), that great men invite destruction (Sophocles, Antigone, 613-4), and that in battle a man may shed blood to defend himself (Thucydides, 3.56.2, 66.2).⁴⁶

'Nomos' also means a customary behaviour prescribed and enjoined within a given province. In this sense, nomos may be used to describe a particular way of farming (Hes., W&D 388), a traditional way of praying (Aes., Choephoroe, 93), a particular method of raising or breeding horses (Pindar, Isthm., 2.38), etc.⁴⁷

'Nomos' is also used to describe not the norms for life themselves, but the source from which they emanate, the authority that issues and guarantees norms. Heraclitus (fragment 114), e.g., states that all human events are sustained by one, the divine Nomos, and this Nomos is the permanent transcendent source of these events. Though Heraclitus does not describe this source in the extant fragments, it is variously described in other Archaic literature as an human authority, a god or goddess, or some being beyond both gods and men.⁴⁸

Such broad definitions of 'nomos' fall into disuse by the late sixth century, where nomos (nomoi-plural) is employed more consistently within the narrower compass of custom. By this time, the Greeks recognize certain nomoi or mores common to all Greeks (Herodotus 6.86B.2, 7.102.1, Euripides, Orestes 495, frag. 853, Thuc. 1.41), and others common to the barbarians (Eur., Andromache, 243; Bacchae, 484). 'Nomos' is also used in the literature to describe the peculiar customs of particular poleis. Popular late sixth and early fifth century meanings of 'nomos', adventitious to that of custom, include: traditional beliefs (Aes., Supplices 220, 241; Soph. Ajax 1130, 1434; Antigone 24.519). Admittedly, it is virtually impossible to know precisely when 'nomos' means rule, practice or customary belief.

Fifth century writers finally give to 'nomos' the classical meaning of political and judicial statute. The earliest uses of 'nomos' to denote statute do not discriminate between written or oral statutes. While, e.g., in Aeschylus (Supplices, 387-391), the nomoi governing the legal claims of marriage are doubtless written statutes, Herodotus' (6.111.1) description of the nomos that have the Athenian polemarch at the Battle of Marathon command of the right wing of the army was probably not a written statute. By the end of the fifth century, however, 'nomos' is used almost exclusively to denote written legislation.

Thus in the fifth century, 'nomos' has reached its apex, its narrowest form. It has also reached its most extolled form. 'Nomos' has become the very soul of the Greek polis, the legal order that guarantees the existence of the Greek people. Nomos is hereafter the harbor in which all Greeks, regardless of class, find safe anchorage.⁵⁰ For nomos formulates that which is respected by all with regard to what is right and wrong, and people bind themselves to this formulation. And thus Pindar's pithy epigram "Nomos is the King of the Polis" becomes the very motto of the classical Greek polis.⁵¹

Footnotes

- 1 "Greek Law," Encyclopedia Britannica, Vol. 8 (1979), p. 398.
- 2 Paul Vinogradoff, Outlines of Historical Jurisprudence. (London: 1922), Vol. 2, p. 3.
- 3 Werner Jaeger, "Praise of Law," Scripta Minora (Rome: 1960), Vol. II, p. 321.
- 4 M. Ostwald, "Ancient Greek Ideas of Law," Dictionary of the History of Ideas. Vol. II p. 674.
- 5 Ibid., p. 675.
- 6 Jane Harrison, Themis (Oxford: 1912), p. 483.
- 7 loc. cit.
- 8 M. Ostwald, op. cit., p. 675.
- 9 F. M. Cornford, From Religion to Philosophy (New York: 1957.), p. 13 ff.
- 10 Ibid., p. 23.
- 11 Ibid., p. 28.
- 12 Harrison, op. cit. p. 487. Harrison seems to implicate that we can gain this understanding from the Homeric epics as well. Yet Homer's far more restricted utility of Themis as goddess, and the apparent absence of Themis before the Olympians, would seem to negate her being the substratum of the Olympians, important though her function may be.
- 13 J. W. Jones, Law and Legal Theory of the Greeks. (London: 1956), pp. 28-9.

14 Harrison, op. cit., p. 480.

15 M. Gagarian, "Diké in the Works and Days," Classical Philology, 68 (1973), p. 82. Gagarian points out that L. R. Palmer is the first author to notice that these two meanings of diké arose simultaneously. R. Hirzel's thesis (and those of his followers, Ehrenberg & E. Wolf) that the terms evolved from one meaning to the next is no longer tenable.

16 loc. cit.

17 Werner Jaeger Paideia, trans. G. Highet. (New York: 1945), Vol. I, p. 103.

18 Hesiod, "Works and Days" Readings in Ancient History, 2nd ed., ed. Nels M. Bailkey (Lexington, Mass.: 1976), p. 129.

19 Gagarian, op. cit., p. 81.

20 Ostwald, op. cit., p. 676. for a-c.

21 Jaeger, Paideia, Vol I, pp. 103-4. for d-e.

22 Friederich Solmsen, Hesiod and Aeschylus. (Ithaca, N.Y.: 1949), p. 83.

23 Werner Jaeger, "Solon's Eunomie" Five Essays. trans. A. Fiske (Montreal: 1956), pp. 90-91.

24 Jaeger, "Solon's Eunomie," pp. 78-9.

25 Michael Gagarian "Diké in Archaic Greek Thought," Classical Philology, 69 (1974), p. 192.

26 "Solon's Eunomie," p. 91

27 Solmsen, op. cit., p. 114.

28 "Diké," Theological Dictionary of the New Testament, ed. G. Kittel (Grand Rapids: 1964), Vol II, pp. 178-179.

29 Jaeger. "Solon's Eunomie," p. 90.

30 Jaeger, Paideia, Vol. I, p. 102 ff.

31 F. M. Cornford, op. cit., p. 6 Harrison. op. cit., p. 517 Ms. Harrison and Mr. Cornford do not adequately assess the changing meaning of the goddess Diké from Homer and Hesiod, through Solon, to Anaximander. They contend, in my opinion wrongly, that Diké always controls a thoroughly moral universe. We are contending, following Jaeger and contemporary scholars, that the understanding of diké as natural law, and Nature, as moral nature, finds its origin in Anaximander. (cf. Jaeger, Praise of Law, p. 329; Gagarian, "Diké in the Works and Days, p. 81; Gagarian, "Diké in Archaic Greek Thought," p. 187.).

32 Kirk, G. S., and J. E. Raven, The Pre-Socratic Philosophers (Cambridge: 1957), p. 104.

33 Simplicius, cited by C. H. Kahn Anaximander and the Origins of Greek Cosmology. (New York: 1960), p. 166.

34 F. M. Cornford, Principium Sapientiae (Cambridge: 1952), pp. 185 ff.

35 Kahn, op. cit. pp. 184-5.

36 Cornford, From Religion to Philosophy, p. 11. cf. also G. Vlastos, "Equality and Justice in Early Greek Cosmologies," Classical Philology, 42 (1947), p. 156.

- 37 Jaeger, "Praise of Law", pp. 329 ff.
- 38 Jaeger, Paideia, Vol. I, pp. 101. cf. also Jones, op. cit. p. 32 ff.
- 39 Ibid., Vol. I, p. 102.
- 40 loc. cit.
- 41 Gagarian, "Diké in Archaic Greek Thought," p. 197.
- 42 Cornford, From Religion to Philosophy, p. 30.
- 43 Martin Ostwald, Nomos and the Beginning of the Athenian Democracy (Oxford: 1969), p. 20.
- 44 Cornford, From Religion to Philosophy, pp. 27-30.
- 45 Ostwald, "Ancient Greek Ideas of Law," p. 682.
- 46 loc. cit.
- 47 Cornford, From Religion to Philosophy, p. 30.
- 48 Ostwald, Nomos and the Beginning of the Athenian Democracy, p. 103
- 49 Ibid., p. 36 ff. Ostwald, "Ancient Greek Ideas of Law," pp. 683-4.
- 50 Jaeger, "Praise of Law," p. 332.
- 51 Ibid., p. 333.

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