CONTEMPORARY LEGAL ISSUES AND
THE INFLUENCE OF HELLENISM

JUSTICE AND PHILOSOPHY

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(I) Introduction

It is widely and universally accepted that Europe owes its spiritual origin to the works of the ancient Greek Thinkers and Philosophers, Homer, Hesiod, Pindarus, Sophocles, Euripides, Thoucidides, Plato and Aristotle just to name a few.

One topic that occupied the minds of the Greek thinkers and in which they excelled, is the philosophy of answering the human questions relating to the universe and our presence in life. The philosophical question addressing the meaning and the substance of Justice did not concern the Greek thinkers during the Archaic Period (15th - 7th century BC), but started concerning their minds when the various Greek cities introduced written laws in their societies (7th & 6th centuries BC). That question was mainly addressed by them during the Classic Period (5th and 4th centuries BC) when two schools of thought appeared, the first by the Sophists, largely represented by Protagoras and the second, by the great Philosophers Plato and Aristotle.

With this introduction, I will attempt, in this 20 minute speech to address the topic “Justice and Philosophy” with reference to the notion that was formed by the Greeks on Justice during the three above mentioned main historic periods.
(II) **Archaic period** (15th-7th century BC)

During this period the concept of ‘Justice’ was connected with three Goddesses namely, THEMIS, DIKI and NEMESIS.

The first reference to Themis appears in Homer’s work, namely Heliad and Odyssey where we see Themis convening the assemblies of the Gods and advising Zeus on various matters relating to the administration of Justice.

Themis, according to Homer, represents the divine element and her decisions apply both to humans and gods equally. Not only this but her decisions are superior to God’s will, since she represents both the ethical and the physical order. This is the literal meaning of her name, deriving from the Greek verb “tithimi” which means “that has been established” “the one that is applied”. When it comes to the human level, Themis, has a dominant role in the assemblies of the Cities where Justice was administered as she was considered the protector of social order which allowed the people to live in harmony in organised societies.

Hesiod writes that Themis was the daughter of the very first divine couple - Uranus and Earth - and the second, after Mitis, wife of Zeus. She was pictured sitting next to Zeus during the assemblies of the Gods and she was portrayed wearing a gold laurel crown and to hold scales on her left hand, an element which symbolized the balance and fairness of her judgments and
decisions. Later, due to the influence of the Roman concepts, she was identified with the Roman Goddess of Justice “Iustitia” (Lady Justice), hence the legal term “justice”. She is thus portrayed having her eyes covered by a veil, a symbol representing the impartiality and objectivity of her decisions without fear or favouritism towards anybody, holding scales in her left hand, a symbol of balance as already mentioned, and a sword in her right hand, indicating that her decisions and judgements should not only be respected but also executed, even forcibly.

The second Goddess who was connected with the questions of Justice, addressed by the Sophists, was Diki. We also find references to her in Homer’s works and her name means and denotes an example of social behaviour. According to Hesiod, she was the daughter of Zeus and Themis and her reaction toward the people who act contrary to law is expressed in two ways. She either appears in a foggy cloud above the city in order to punish the people who disobey the law; or is seen sitting next to Zeus, her father, who punishes, on her behalf, the unjust.

Diki was closely linked to the human society and, as was expected, she started gradually to replace the reputation of her mother Themis in the people’s minds and conscience. In the end, as a result of the various changes that occurred in the societies and especially the movement from the aristocrat constitution in the various ancient Greek societies which her mother represented, to the democratic constitution, Diki, is clearly
acting in the society’s conscience as the protector of Justice and the guarantor of the democratic principles.

Finally NEMESIS, herself also the daughter of Zeus and Themis, was linked with the sanctions that were imposed on the people who did not conform with the principles of Justice.

The question, next, to be addressed is the one concerning the influence that mythology, through the three above mentioned goddesses, had and even has still today, on the whole concept of Justice.

What is attributed to Goddess Themis, who was identified with the Roman Goddess Justitia, are the following important principles: (a) Nobody is above the law, (b) all are equal before the law and (c) compliance with the law and its norms can be imposed even forcibly. Principles that even today form the basis of the Rule of Law.

We owe to Goddess Diki the principle that the law and its framework is necessary for the well-being of the people who live in organised societies. To Goddess Diki, today’s Greeks also owe the terms “legal proceedings” (diki), “judge” (dikastis) and “lawyer” (dikigoros) which are still used today.
During this historic period, Greeks try to get away from mythology and try to understand the world according to logic and observation. This effort first began in the Greek cities of Western Asia Minor namely Militos, Efesos and Kolophon and spread to the Greek cities of South Italy, Krotonas and Eleatis. The main representatives of this period are Thalis, Anaximadros, Anaximenis, Herclitos, Empedocles, Democritus, Zenon and Pythagoras.

The main characteristic of these Philosophers, who were named pre-Socratians, as they all lived before Socrates (470-399 BC), is that they combined philosophy with science – astronomy, mathematics, mechanics and medicine – in order to gain the knowledge and understanding of the creation and the substance of the world. But they did not confine themselves only to cosmological questions. They considered the meanings of virtue, wisdom and Justice and significantly contributed to the enactment of laws and the understanding of the democratic constitution.

The introduction of written laws was assigned to citizens who excelled for their logic and wisdom such as Zalefkos in Lokroi, Harondas in Katani, Lykurgus in Sparta and Solon in Athens.
The enactment of written laws in Greek City-states had a huge significance and importance. In this way the security of the law was safeguarded and, most importantly, the supremacy of the law was established, an achievement for which the Greeks take pride.

At this point, it is worth giving two examples which show the great respect the Greeks had for the law, which they considered to be binding on everybody and aiming at Justice, well-being and benefit. The first example comes from Herodotus and refers to Xerxes the King of Persia and the disgraced Spartan King Demaratos. Before Xerxes invaded Greece in 480 BC he asked Demaratus whether the Greeks would dare fight against his huge army. Demaratus’ answer was that the Greeks fear the law above all, something which did not allow them to flee. The second example is found in Plato’s dialogue “Crito” where Socrates refuses the chance to avoid the death penalty imposed on him, reasoning that his execution was decided according to the law.

(III) Classical Period (5th and 4th centuries BC)

During this period, Athens was the centre of Hellenism in the spiritual level where two schools of thought are in conflict, namely the Sophists and the Philosophers.

The main representative of the Sophists is considered to be Protagoras who taught the relevance of ethical values. He is the
father of the concept that “the human person is the norm of all things” which, liberally interpreted, states that the truth is how each person sees it. According to Protagoras the law did not originate from the Gods but was a human creation due to necessity. With this statement he actually introduced the theory of the origin of the law, today known as “social contract”. On this basis, he defended one’s submission to the law for the common good and interest, where as other Sophists argued and believed that the law is merely the imposition of the will of the stronger on the weaker.

The beliefs of the Sophists on Justice are discussed in Plato’s “Republic” by Socrates and other prominent thinkers. The core subject of the discussion in Plato’s ‘Republic’ is the question/concept of justice and more specifically what is justice and what is the benefit of a person who acts justly.

The interlocutors agreed that in order to answer the first question, the structure of a just state must be determined. Thus, they created an imaginary and ideal society in which the best persons, the Philosophers, who possess wisdom and knowledge, are in Power. They are assisted by the Guards who are brave and sensible and whose mission is the safekeeping of the City-state from internal and external enemies. The rest, the common citizens, make up the third class, and their mission is to produce and distribute goods, necessary for the perseverance of the City.
In the “Republic”, after the interlocutors and Socrates considered the perfect society having three classes of people, they concluded, after long discussions, that Justice is a virtue which serves not the well-being of the persons administering it, but the well-being of others. Hence it is the greatest virtue since it derives from selflessness and leads to the freedom of the soul. Thus the second question was then answered by them, since the man who acts justly is virtuous the benefit for him is huge as he is liked by the Gods, in contrast to the unjust human.

Plato thus, attributed a metaphysical concept to Justice which was the result of his Theory on Ideas. With this theory Aristotle, who was a student of Plato, disagrees. Aristotle analyses his own theories in his works “Nicomachean Ethics” and “Politics”.

If one studies the last two works that I mentioned, Firstly one realizes that Aristotle disagrees with Plato’s structure of the ideal City-State ruled by the three classes, expressing the view that Plato failed to understand the true nature of the citizen. According to Plato’s understanding - he argues - only the first class rules and the other two classes are being ruled. But the citizens of the two classes that are being ruled, are at the same time ruling since they participate in the Legislative and judicial functions. It is thus apparent that Aristotle, by recognizing that citizens take part in law making and judging, is introducing for the first time the constitutional doctrine of the separation of powers where the law makers and the judiciary are separate from the executive power which, according to Aristotle must be
exercised by the best citizen in contrast with Plato, who imagines a team of Philosophers exercising it.

Aristotle also supports that the ideal society is not the one which has a small team of virtuous men, but the one which sets out the conditions so that all the citizens can live the perfect life which leads to eudaimonia. With this theory, Aristotle expresses his disagreement with various of Plato’s ideas, amongst which is the concept of Justice. According to Aristotle, Justice is not a metaphysical concept but one that is happening in the collective life of the City-State and is tested on the relationship between the rights and obligations of the citizens.

From this angle, Justice has virtuous, political and social values. He divided Justice to “general” and “specific”. The difference between the two being on four elements namely nature, source, cause basis and subject matter. He identifies “general justice” with the concept of legality referring mainly to criminal law, whereas he relates “specific justice” to the material goods which are the object of competition between the people and thus with the private law. At the same time he acknowledges that in a lot of instances the enacted law has gaps or is in contrast with the natural law, which he identifies with Justice. In order to complete the gaps or in order to avoid any injustice, he introduces the concept of Equity (Epieikeia). Thus Equity is not a creation of the Anglosaxon law as is generally believed, but of Aristotle.
Conclusion

Concluding my brief reference to the leading Philosophers Plato and Aristotle, I emphasise that their works are still taught today in the world’s leading universities. Their influence in all aspects of philosophy has been huge, as huge as is their influence on the understanding we have until today, of Justice with Plato attributing to it an ethical and metaphysical meaning, and the realist Aristotle attributing to it a political and social value for the well-being of the citizens.

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