Chapter 1 Ancient Notions of Justice

1. The Appearances of Justice

What is justice? Is it a thing? If so, what kind of thing is it? Does this thing do anything to or for anyone and, if so, what does it do? How does one recognize its presence or absence? Or, if it is not a thing, is it a relationship of some sort between things? If so, what kind of relationship is it? to what kinds of things does it pertain? and when does it pertain? Is it the same thing as law? If law and justice are not the same thing, does justice logically antecede law with laws then expected to serve justice? or do laws logically antecede justice and define it instead? Or do laws sometimes define justice while at other times laws are created by man to serve justice?

These questions, and many others that will come up in this treatise, seek to understand the Object of the idea we call justice. Until we develop clearer pictures of the various manifestations in experience we have come to associate with "justice" we have only a word for we-know-not-what. Our first order of business, then, is to examine and survey those characteristics, properties, and qualities that are said to be, or to imply the existence of, the idea of justice.

Notions of "justice" seem to have been around for a very long time, dating back to early civilization, but we find no attempts to provide a technical explanation of the word prior to the Greek philosophers. It would seem from this that the notion we call "justice" must have been regarded as obvious and self-evident by the ancients. Modern translations from ancient languages appear to translate the meanings of ancient words to "justice" based upon the contexts of ancient legal or religious standards. The existence of legal codes, it is assumed, implies the ancients must have had some notion of justice because "law" and "justice" seem to always be found tightly bound to each other.

It can be argued that some notion of "justice" was probably present in the ancient Sumerian city-state of Lagash in Mesopotamia during the reign of king Urukagina in the 24th century BC. Inscribed on clay tablet artifacts, we find in the Praise Poem of Urukagina the line, "Urukagina solemnly promised [the god] Ningirsu that he would never subjugate the waif or the widow to the powerful." Urukagina is best known for his institutions of reforms to combat corruption. Although no actual text of Urukagina's Code has been discovered, what we do know about it is inscribed on three clay cones, called The Reform Text of Urukagina, kept in the Louvre in Paris. Despite the absence of an actual law text, Urukagina's Code is regarded by some as the oldest known legal code in recorded history. Surviving fragments that refer to it tell us his code: exempted widows and orphans from paying taxes; compelled the city to pay for funeral expenses; decreed that the rich had to use silver when purchasing from the poor; and forbade the powerful from compelling the poor to sell to them if the poor did not wish to do so.

These examples seem to indicate a wish or intent to prevent corruption (depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle), forbid coercion (compulsion of a free agent by physical, moral, or economic force or threat of physical force) and promote consensual civil relationships among the inhabitants of the city [Garner (2019); entries for corruption, coercion and consensual]. The provision for tax exemptions for widows and orphans, as well as the provision for the city being responsible for funeral expenses, both seem to speak for an idea of charity (aid given to the poor, the suffering, or the general community for religious, educational, economic, public safety or medical purposes) [*ibid*., entry for charity]. Funeral expenses in Lagash included the costs of ritual food and drink libations for the dead person's journey to the underworld and so here there is an obvious religious purpose of charity. In the case of tax exemption for widows and orphans, the death of the head of a household or the death of a child's parents often could deliver a devastating blow to the survivors in the ancient world, as it can also do today. Making them continue paying taxes to the king would only further harm their economic welfare and so this provision of the law would constitute economic aid and, hence, be an act of charity. From all this we can provisionally conclude that preventing coercion, promoting consensual and civic community relationships, and charity were all considered acts of justice in ancient Lagash under

Urukagina.

The oldest known law code surviving today is the Code of Ur-Namma, the king of Ur *circa* 2112-2095 BC [Roth (1995), chap. 1]. In all, 30 of its 57 laws have been translated from its recovered fragments. In the code's prologue, Ur-Namma is credited with establishing Ur's monetary system and "Then did Ur-Namma . . . establish equity in the land; he banished malediction, violence and strife . . . The orphan was not delivered up to the rich man; the widow was not delivered up to the mighty man; the man of one shekel was not delivered up to the man of one minas." The Code of Ur-Namma instituted monetary fines for bodily injuries rather than the "eye for an eye" *lex talionis* ("law of retaliation") principle instituted in the Babylonian Code of Hammurabi three centuries later (*c*. 1750 BC). For example, the Code of Ur-Namma stipulates, "If a man knocks out a tooth of another man, he shall pay two shekels of silver." However, murder, robbery, some cases of adultery, and some cases of rape were capital offenses. Fines were the penalty specified in most of its laws; in some cases the fine was paid with silver while in others it was paid with slaves. There were two basic strata of people: free people and slaves.

Some of Ur-Namma's laws exhibit the characters of retaliation (the act of doing someone harm in return for actual or perceived injuries or wrongs)[1] or of retribution (punishment imposed for serious offense)[1]. Some of the examples of retaliation are:

> 1. If a man commits a murder that man must be killed.
> 2. If a man commits a robbery he will be killed.

Laws suggestive of retribution rather than retaliation include:

> 3. If a man commits a kidnapping he is to be imprisoned and pay 15 shekels of silver.
> 9. If a man divorces his first-time wife he shall pay her half a mina of silver.
> 15. If a prospective son-in-law enters the house of his prospective father-in-law, but his father-in-law later gives his daughter to another man, the father-in-law shall return to the rejected son-in-law twofold the amount of the bridal presents he had brought.

None of Ur-Namma's laws, however, sanction revenge (vindictive retaliation against a perceived or actual wrongdoer; the infliction of punishment for the purpose of getting even)[1]. Neither is revenge (*vindicta* in Latin) a characteristic of the principle of *lex talionis*, and the known texts of the Code of Ur-Namma contain no examples of vindictive or even "eye for an eye and a tooth for a tooth" punishments. It would therefore seem that the properties of retribution and retaliation fit the idea of "justice" as it was seen by the people of Ur but that revenge was something outside of or apart from or even contrary to the idea of "justice." Equity; banishing malediction (to speak evil of; to slander), violence, and strife; retaliation; and retribution appear to be characteristics of the notion of "justice" in ancient Ur.

The Code of Hammurabi is the best preserved and arguably most famous of the ancient Mesopotamian legal codes [Roth (1995), chap. 8]. In it we find the explicit use of the word "justice" (assuming that the meaning of the Akkadian word *mïšaram* is correctly translated as "justice"). According to it, Hammurabi was commanded by the gods "to prevent the strong from oppressing the weak." He was to establish "truth and justice" for the people. The phrase translated as "truth and justice" was "*kittam u mïšaram*" and the root word *kïttu* can mean either truth or justice in Akkadian; therefore the distinction between *kittam* and *mïšaram* is perhaps somewhat ambiguous in English. Akkadian had become an extinct language by the 8th century BC and translating extinct languages into modern languages always presents formidable difficulties and uncertainties.

In contrast to Ur-Namma's code, the Hammurabi Code exhibits in many places what the Romans later called the Law of Retaliation (*lex talionis*). Possibly the most widely known example of this is that of

[1] See Garner (2019).

Law 196, "If a [gentleman(?)] should blind the eye of another [gentleman (?)] they shall blind his eye." Penalties for what we would today call felonies often were punished with death as, e.g., Law 21 ("If a man breaks into a house they shall kill him [?] and hang him in front of that very breach"). On the other hand, many of the laws laid down in Hammurabi's code deal with price regulations in commerce or monetary penalties in what we might today call "civil cases."

The 282 laws laid out in Hammurabi's code are laid out as case law, i.e. they look like judgments rendered in particular court cases and then ordered to be generally applied just as they were rendered. This feature of the code provides some insight into Babylonian culture and traditions. The laws appear to be addressing transgressions of these traditions and, in this sense, appear to reflect an encompassing idea of "fairness" (the quality of treating people equally or in a reasonable way; the qualities of impartiality and honesty")[1]. Of course, one must also bear in mind that Babylon was a caste society (free-born men and women, freed men and women, and slaves) and "treating people equally" in Babylon only went so far as to mean "treating people of the same caste equally."

The case law organization of Hammurabi's Code also suggests a principle of evolution in the perfecting of Babylonian law. This is evident from a number of instances where cases involving the same kinds of actions, but taken in differing circumstances, are grouped together but with significantly different judgments. For example,

> 202. If anyone strike the body of a man higher in rank than he, he shall receive sixty blows with an ox whip in public.
> 203. If a free-born man strike the body of another free-born man of equal rank, he shall pay one gold mina.
> 204. If a freed man strike the body of another freed man, he shall pay ten shekels in money.
> 205. If the slave of a freed man strike the body of a freed man, his ear shall be cut off.

In this example the differing circumstances are differences in caste but there are other groups of laws where the differing circumstances do not involve caste.

We can note in the above example that Babylonian law, like the Code of Ur-Namma, has a character of retribution presented in its code. We can likewise note the presence in it of the character of retaliation, e.g.,

> 1. If anyone ensnare another, putting a ban on him, but he cannot prove it, then he that ensnared him shall be put to death.
> 2. If anyone bring an accusation against a man, and the accused go to the river and leap into the river, if he sink in the river his accuser shall take possession of his house. But if the river prove the accused is not guilty, and he escape unhurt, then he who brought the accusation shall be put to death, while he who leaped into the river shall take possession of the house that had belonged to he who brought the accusation.
> 3. If anyone bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death.
> 6. If anyone steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

This example also seems to suggest that prohibition of false accusations as well as malice (the intent, without justification or excuse, to commit a wrongful act; reckless disregard of the law or of a person's legal rights)[1] was part of Babylon's notion of justice.

Punishments for malfeasance (a wrongful, unlawful or dishonest act, especially wrongdoing or misconduct by a public official)[1] and malpractice (an instance of negligence or incompetence on the part of a professional)[1] were also prescribed in Hammurabi's code. Here are some examples:

> 5. If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgment.
> 218. If a physician make a large incision with the operating knife and kill him, or open a tumor with the operating knife and cut out the eye, his hands shall be cut off.
> 219. If a physician make a large incision in the slave of a freed man, and kill him, he shall replace the slave with another slave.

Hammurabi's code regarded swindling (to cheat a person out of property)[1] another person to be the same as theft:

> 7. If anyone buy from the son or the slave of another man, without witnesses or a contract, silver or gold, a male or female slave, an ox or a sheep or an ass or anything, or if he take it in charge, he is considered a thief and shall be put to death.

This can be regarded as an example of swindling because a son did not have the right to sell or give away his father's property without permission, nor could a slave sell or give away his master's property. The buyer would know that without a written contract or witnesses to the sale he would be obtaining another man's property by subterfuge (a clever plan or idea used to escape, avoid, or conceal something; the use of a secret trick or an ingeniously dishonest way of doing something)[1]. The Hammurabi Code recognized that the mind could be a more potent weapon than a club for taking someone's property away from him.

The Code also punished careless or reckless behavior. For example,

> 53. If anyone be too lazy to keep his dam in proper condition, and does not so keep it; if then the dam break and all the fields be flooded, then shall he in whose dam the break occurred be sold for money, and the money shall replace the corn which he has caused to be ruined.
> 55. If anyone open his ditches to water his crop, but is careless, and the water flood the field of his neighbor, then he shall pay his neighbor corn for his loss.

Misprision of a felony (concealment or nondisclosure of someone else's felony)[1] could result in the most severe punishment for a person:

> 109. If conspirators meet in the house of a tavern-keeper, and these conspirators are not captured and delivered to the court, the tavern-keeper shall be put to death.

Embezzlement (the fraudulent taking of personal property with which one has been entrusted)[1] was also proscribed by Hammurabi's code:

> 112. If anyone be on a journey and entrust silver, gold, precious stones, or any other movable property to another and wish to recover it from him; if the latter does not bring all of the property to the appointed place, but appropriate it for his own use, then shall this man, who did not bring the property to hand it over, be convicted, and he shall pay fivefold for all that had been entrusted to him.

Case law is inherently *ad hoc* and unsystematic. It is therefore not surprising to see law codes such as Hammurabi's exhibit on-going amendments and further additions as new cases under new circumstances are brought to judgment. For this reason, precedent (something of the same type that has occurred or existed before)[1] has always been an important part of law. If one can discern *principles* that appear to be at work in lawgiving and judicial rulings, then those principles can properly be viewed as characteristics of how *justice* is regarded by the people who are governed under those laws. In addition to retaliation and retribution, the examples provided by Hammurabi's laws hint at a number of other principles as well: fairness and equity in the administration of the law; protection of people's personal property; proscription

of telling falsehoods (lying); proscription of malice; protection of general and individual welfare; enforcement of public obligations; penalizing reckless behavior or incompetent performance that affects the welfare of other people or the public at large; fair regulation of commerce to safeguard economic welfare; setting expectations for civic and civil duties to be undertaken by individual members of the public; and proscription of violence and civil disorder. We can also note that, again, revenge is *not* one of the principles of Babylonian justice; nor does charity seem to enter into it.

Many scholars have noted similarities between Hammurabi's Code and Mosaic Law (said to have originated in the 13th century BC and been first committed to writing around the 9th century BC or later). The similarities have led to speculation that Mosaic Law was perhaps derived or descended in part from the Code of Hammurabi. No proof of a direct connection between them has been found although the Torah states that Abraham was born in Ur [Genesis, 11]. By the time of Hammurabi, Ur had long been part of the Babylonian empire. It is not implausible Ur might have influenced both Babylonian and Mosaic law. It is also plausible that knowledge of Babylonian law might have been carried by trade caravans. Given that people's lives were much the same throughout the region for centuries, it is also quite possible that the resemblances are merely accidental or, perhaps, manifest some property or properties of human nature. In Mosaic Law the word *ts^{e}dâqâh* is often translated as "justice"; this word also has connotations of rightness and righteousness [Strong (2001), pg. 236 (6666)]. The root word from which it derives basically means "to be righteous, be in the right, be justified, to be just."

Whereas in the Hammurabi Code the laws set out are credited to Hammurabi himself, Mosaic laws are generally presented as divine commandments from God. This adds a tincture of "righteousness" to the connotations of retaliation, equity, and charity found in the older law codes.

Alongside these examples we also possess a corpus of 200 Hittite laws, often referred to as the Code of Nesilim, dating from *c*. 1650 to 1100 BC [Roth (1995), chap. 12]. Again a strong resemblance to the Code of Hammurabi and the Mosaic Laws is notable. The Hittite laws address the span of Hittite social culture, their sense of justice, morality, common outlawed actions, and is notable for many social issues including the humane treatment of slaves. Punishments were often less severe than those found in Hammurabi's code or Mosaic law. The death penalty was invoked much less often for serious offenses with enslavement or forced labor being the more typical sentences.

In the Hittite Empire, as elsewhere in the ancient Near East and even today, revenge killings were not uncommon. However, this was considered to be a personal private affair and the state did not want to get involved with it. For example, if I killed your father and then you killed me in revenge, you would not face the death penalty under Hittite law. But there would be a punishment leveled, i.e.,

> 1. If anyone kills [a man] or a woman in a quarrel, he shall bring him for burial and shall give 4 persons, male or female respectively. He shall look [to his house for it].

In other words, you would be required to provide four people to become slaves of my heir and these people had to come out of your own household. Presumably you would hand over four of your slaves but if you didn't have four slaves of the specified gender this could mean some of your children would become slaves. The word translated as "persons" above literally meant "heads." And, of course, if my heir decided to kill you in revenge, he could simply give *your* heir back the four "heads" you paid to him. In effect, you would have paid for your own killing. Does that sound appealing? The state's concern was to preserve law and order and to discourage blood feuds, both of which tend to promote domestic tranquility. Beyond that, the king wanted to stay out of "private affairs." The Edict of Telipinus read,

> The rule of blood is as follows: Whoever commits a deed of blood, whatever the "lord of blood" [i.e., the next of kin] says – if he says, "Let him die", he shall die; but if he says, "Let him make restitution", he shall make restitution – the king will have no say in it.

If a murderer escaped then the nearest village would be responsible for compensating the victim's family [Gurney (1990), pp. 93-95]. Hittite law tried to encourage restitution over retaliation and discourage revenge.

Some of the Hittite laws seem to be aimed at or associated with treaties between the empire and foreign countries. Luwiya and Arzawa, two foreign kingdoms neighboring the land of Hatti (i.e., the Hittites) are mentioned explicitly. Both were vassal states of the empire. The Hittites stand out in the ancient world for their use of treaties and diplomacy as important alternatives to war. Many historians have concluded Hittite diplomacy was as important as Hittite military might for the success and longevity of the empire. Here are what appear to be examples of laws aimed at abiding by treaties:

> 19a. If a Luwian abducts a free person, man or woman, from the land of Hatti, and leads him away to the land of Luwiya/Arzawa, and subsequently the abducted person's owner recognizes him, the abductor shall bring (i.e., forfeit) his entire house.
> 19b. If a Hittite abducts a Luwian man in the land of Hatti itself, and leads him away to the land of Luwiya, formerly they gave 12 persons, but now he shall give 6 persons. He shall look to his house for it.
> 20. If a Hittite man abducts a Hittite male slave from the land of Luwiya, and leads him here to the land of Hatti, and subsequently the abducted person's owner recognizes him, the abductor shall pay him 12 shekels of silver. He shall look to his house for it.

Hittite law contains laws pertaining to marriage, divorce, adultery and sexual relations. Most of them deal mainly with exceptional circumstances of a sort that violated common customs. Gurney speculates that the absence of additional laws dealing with more common legal matters attending marriage and family might mean that the Hittites saw no need to regulate these matters and were content to leave them to traditional customs [Gurney (1990), pp. 87-88]. If this is true, then it would follow that the aim of the explicit laws pertained to maintaining and promoting domestic tranquility among the people. It would also mean Hittite government conformed to a principle of minimal interference with the traditions and customs of the people it governed. As Montesquieu said,

> Manners and customs are those habits which are not established by legislators, either because they were not able or were not willing to establish them. [Montesquieu (1748), vol. I, pg. 300]

Such forbearance is also manifested by the Hittite conquests in regard to religions. As the empire grew, its rulers left in place the local gods and cults of the regions they subjugated until their pantheon grew so large that the Hatti became known as "the people of a thousand gods."

Some of the Hittite laws appear to be aimed at establishing fair compensation for accidental injury, property damage, or loss. Some examples are:

> 43. If a man is crossing a river with his ox, and another man pushes him off (the ox's tail), seizes the tail of the ox, and crosses the river, but the river carries off the owner of the ox, the dead man's heirs will take that man who pushes him off.
> 44a. If anyone makes a man fall into a fire, so that he dies, he shall give a son in return.
> 45. If anyone finds implements, [he shall bring] them back to the owner. He (the owner) will reward him. But if the finder does not give them (back), he shall be considered a thief.

There are many laws pertaining to agriculture, animal husbandry, agricultural practices, and damage or loss of livestock, crops, or other properties employed in the practice of agriculture. Some of these are aimed at ensuring fair compensation or providing retribution to the person who suffers loss or damage because of another person. However, the sheer number of laws pertaining to these matters suggests that the state's direct interest in them is likely due to the vital importance of agriculture and agricultural economics to Hittite society. Thus, these laws seem to stem from the state's interest in promoting,

establishing and maintaining the general welfare of the Hittite people.

Other laws tightly regulated wages and prices. In a civilization where famine was a not-infrequent natural disaster, and where economic and environmental factors tended to be more or less unchanging over the course of years, the desire to achieve greater reliability and stability in the economic environment of the empire seems to clearly indicate another example of the aim of promoting a good state of general welfare.

Hittite law was in place for around 500 years and it would be surprising if, within such a large period of time, the laws were unchanging. And, in fact, there is evidence that they did evolve over time. There is still further evidence that the laws were not uniformly the same everywhere within the Hittite Empire. There appear to have been "local" laws and precedents the state did not concern itself with and which were adjudicated by local tribunals. When the state *was* concerned with a legal case, this seems to have been heard and decided by the local garrison commander who acted under instructions from the king. These instructions have survived in a comparatively good state of preservation. As an example, one extract reads

> Into whatever city you return, summon forth all the people of the city. Whoever has a suit, decide it for him and satisfy him. If the slave of a man, or the maidservant of a man, or a bereaved woman has a suit, decide it for them and satisfy them.
>
> Do not make the better case the worse or the worse case the better. Do what is just.

We see from such documentary evidence that the Hittites had developed a hierarchal court system that was available to anyone and, at least in regard to cases heard by the state, the garrison commanders were instructed to apply the law fairly ("justly") in each case [Gurney (1990), pp. 85-100].

To sum up, the principles that seem to have been applied to lawmaking in the Hittite empire include: retribution; retaliation; protection of people's personal property; promotion of domestic tranquility; abiding by the terms of treaties with foreign kingdoms; establishing fair compensation for injury, damage or loss; establishing, promoting and maintaining the people's general welfare; and minimal interference with traditions and customs.

2. The Notion of Justice and Natural Communities

By the time any of these ancient records were written down, large scale civilization in the Near East was already long established and writing had already been invented. What about the prehistoric ages before this? Was there any notion of "justice" before the invention of laws or the rise of city-states and their kings? We obviously have no written records to go by so anthropologists study the next best thing: the so-called primitive communities that still exist in some parts of the world.

I use the phrase "so-called primitive communities" deliberately to emphasize the facts that "civilization" is a word we use all the time, that everyone thinks he understands perfectly, but proves to be vague and subjective. It didn't even become a word until the mid-eighteenth century, and when it was coined it was minted without sufficiently distinct marks that would enable all of us to clearly recognize when a people are "civilized" versus when they are "primitive", "savage" or "barbarian." Dictionary definitions of the word "civilization" vary somewhat from one dictionary to another. Perhaps as good a definition as any was provided by historian Will Durant, who wrote,

> the word *civilization* will be used in this volume to mean social organization, moral order, and cultural activity; while *culture* will mean . . . the sum-total of a people's institutions, customs, and arts. [Durant (1935), pg. 5 fn.]

He stated the *technical* difficulty with using the word "civilization" very well when he wrote,

> In one important sense the "savage," too, is civilized, for he carefully transmits to his children the heritage of the tribe – that complex of economic, political, mental and moral habits and institutions which it has developed in its efforts to maintain and enjoy itself on the earth. It is impossible to be scientific here; for in calling other human beings "savage" or "barbarous" we may be expressing no objective fact, but only our fierce fondness for ourselves, and our timid shyness in the presence of alien ways. [*ibid.*, pg. 5]

An impartial observer would be hard pressed to find *any* community that did not exhibit *some* degree of social organization, *some* degree of moral order, and *some* institutions, customs, and arts of one kind or another even if these arts consisted merely of tool making or shelter building. Indeed, a community of chimpanzees arguably exhibits all of these characteristics except *moral* order and manifestly recognizable institutions and customs. Any attempt to rank civilizations in order according to the degrees to which they manifest these characteristics is going to be qualitative and produce no crisp boundary in going from one rank to the next. Santayana proposed a very broad taxonomy for "societies" dividing human community into three tiers. He called these tiers "natural society", "free society", and "ideal society."

> Natural society unites beings in time and space; it fixes affection on those creatures on which we depend and to which our every action must be adapted. Natural society begins at home and radiates over the world as more and more things become tributary to our personal being. [Santayana (1905), pg. 137]
>
> Free society differs from that which is natural and legal precisely in this, that it does not cultivate relations which in the last analysis are experienced and material, but turns exclusively to unanimities in meanings, to collaborations in an ideal world. The basis of free society is of course natural . . . but free society has ideal goals. Spirits cannot touch save by becoming unanimous. [*ibid.*, pg. 146]
>
> Ideal society . . . is the society of symbols. . . . Symbols are presences, and they are those particularly congenial presences which we have inwardly evoked and cast in a form intelligible and familiar to human thinking. Their function is to give flat experience a rational perspective, translating the general flux into stable objects and making it representable in human discourse. They are therefore precious not only for their representations or practical value, implying useful adjustments to the environing world, but even more, sometimes, for their immediate or aesthetic power, for their kinship to the spirit they enlighten and exercise. [ibid., pg. 196-197]

The adjective "natural" in "natural society" is a bit problematic because it can seem to imply there is such a thing as "unnatural" society. But all socializing is the product of human actions and all human actions arise out of human nature. Natural society is society in which all human interactions and relationships are personal, where everyone knows everyone else immediately and directly by experiences of social intercourse, and where social bonding and antibonding is based on affections and disaffections. Natural society is the society of families, hunter-gatherer bands, and tiny isolated villages. People in it are bound together entirely by equality, consensus-building, tradition, custom, a shared morality, and, often, a shared set of superstitious beliefs or by shared religious beliefs that lack a formal theology. Sociologists say such a society is *Gemeinschaft* [Abercrombie, *et al*. (2006)].

The phenomenon of a person engaging in social relationships with other people is such a common fact of experience that many people assume human beings have a "social instinct." However, the empirical meaning of the word "instinct" is understood in psychology as

> an unlearned response characteristic of the members of a given species. [Reber & Reber (2001)]

Psychology has other usages for this word but all of these other usages bring in hypotheses – what we may call "mini-theories" – that attempt to explain the empirical characterization in terms of unobservable

(mathematical) objects of theory. Consequently, the term has what Reber & Reber called a "tortured history." What science has taught us, through many decades of painstaking research, is that human beings *learn* those behaviors we call "social." Indeed, we regularly talk about the "socializing" of children by various educating experiences in the home, in school, by means of playing with other children, and by the moral education efforts churches make on behalf of their congregations. Man has no "social instinct" because the behaviors we can empirically observe and classify as "social behaviors" are all learned behaviors. And, sometimes, these learned behaviors come to be unlearned later in life, e.g., in the case of a hermit. As Aristotle famously wrote,

> nothing that exists by nature can form a habit contrary to its nature. [Aristotle (*c.* 340 BC), 1103ª20]

Durant wrote,

> Man is not willingly a political animal. The human male associates with his fellows less by desire than by habit, imitation, and the compulsion of circumstances; he does not love society so much as he fears solitude. He combines with other men because isolation endangers him, and because there are many things that can be done better together than alone; in his heart he is a solitary individual, pitted heroically against the world. If the average man had had his way there would probably never have been any state. Even today he resents it, classes death with taxes, and yearns for a government which governs least. If he asks for many laws it is only because he is sure that his neighbor needs them; privately he is an unphilosophical anarchist, and thinks laws in his own case are superfluous.
>
> In the simplest societies there is hardly any government. Primitive hunters tend to accept regulation only when they join the hunting pack and prepare for action. The Bushmen[2] usually live in solitary families; the Pygmies of Africa[3] and the simplest natives of Australia admit only temporarily of political organization, and then scatter away to their family groups; the Tasmanians had no chiefs, no laws, no regular government; the Veddahs of Ceylon formed small circles according to family relationships, but had no government; the Kubus of Sumatra "live without men in authority," every family governing itself; the Fuegians are seldom more than twelve together; the Tungus associate sparingly in groups of ten tents or so; the Australian "horde" is seldom larger than sixty souls. In such cases association and cooperation are for special purposes, like hunting; they do not give rise to any permanent political order. [Durant (1935), pg. 21]

Durant isn't quite correct in saying "association and cooperation are for special purposes" unless one counts "day to day living" as a "special purpose." "Anarchy" in no way describes the social life of these people although it is correct to say they have no manifestly recognizable rulers or instituted government. Taking the BaMbuti Pygmies of the Ituri Forest in Africa's Congo as a representative example, a BaMbuti group has no "council" short of every adult in their entire camp. All decisions and disputes are argued out until a consensus agreement is reached. We may term their "political organization" a "direct consensus democracy." Anthropologist Colin Turnbull provides this description:

> This incident[4] illustrates one of the most remarkable features of Pygmy life – the way everything settles itself with apparent lack of organization. Cooperation is the key to Pygmy society; you can expect it and you can demand it, and you have to give it. If your wife nags you at night so that you cannot sleep, you merely have to raise your voice and call on your friends and relatives to help you. Your wife will do the same, so whether you like it or not the whole camp becomes involved. At this point someone – very often an older person with too many relatives and friends to be accused of

[2] The Bushmen of the Kalahari are also known as the Sān people.

[3] More precisely, the BaMbuti Pygmies of the Ituri Forest in the Congo. BaMbuti is the collective name for four populations: the Sua, Aka, Efe, and Mbuti.

[4] Turnbull had just described in detail a fight that had broken out between two men and how it had been settled.

> being partisan – steps in with the familiar remark that everyone is making too much noise, or else diverts the issue onto a totally different track so that people forget the origin of the argument and give it up.
>
> Issues other than disputes are settled the same way, without leadership appearing from any particular individual. . . . In fact, Pygmies dislike and avoid personal authority, though they are by no means devoid of a sense of responsibility. It is rather that they think of responsibility as communal. If you ask a father, or a husband, why he allows his son to flirt with a married girl, or his wife to flirt with other men, he will answer, "It is not my affair," and he is right. It is *their* affair, and the affair of the other men and women, and of their brothers and sisters. He will try to settle it himself, either by argument or a good beating, but if this fails he brings everyone else into the dispute so that he is absolved of personal responsibility.
>
> If you ask a Pygmy why his people have no chiefs, no lawgivers, no councils, or no leaders, he will answer you with misleading simplicity, "Because we are the people of the forest." [Turnbull (1962), pp. 124-125]

If you wonder how long such a loose and informal society could endure, the answer might surprise you. There is a report preserved in the tomb of Egyptian Pharaoh Neferkare (c. 2278 BC) from Neferkare's governor, Herkouf, of encountering a forest people during an expedition to find the source of the Nile. His description precisely matches the BaMbuti. He is even said to have brought one back with him by order of the Pharaoh. They are thought to be the oldest still-existing society in Africa and, perhaps, on Earth. In comparison, their track record for longevity makes every "advanced civilization" (as that phrase is typically used) look very transitory.

The lack of a formal institution of *government* in these hunter-gatherer societies in no way implies that the community is not *governed*. Quite the opposite. Community *governance* may be unorganized and informal – as in the case of the BaMbuti – but that doesn't mean it doesn't exist at all. The BaMbuti, and the other societies noted by Durant, are examples of what I call *Gemeinschaft* Communities [Wells (2012), chap. 11, pp. 376-381]. *Gemeinschaft* governance is governance of a Community through loosely organized cooperations by groups of individuals on specific matters of direct interest to them, and in which cohesion of governance is primarily reliant upon people's civic conformity to Community mores and folkways. Traditions also frequently play an important role.

For this type of governance to be possible, one essential condition is that the people know each other personally and as a direct result of numerous past social interactions with one another. This means the cohesion of the community begins to break down as the population grows too large to support people's direct personal knowledge of each other. Using the BaMbuti as an example again, BaMbuti *groups* are very small – no more than several families – but the overall BaMbuti population in the Congo is comprised of many such groups. These groups are not completely isolated from each other but they do live apart from each other and lack day-to-day contact. Each group is self-sufficient and independent of the other groups. BaMbuti do like to visit their relatives who live in other groups, and marriages avoid the unhealthy effects of incest simply by a man from one group marrying a woman from another. (Incest is one of the BaMbuti's strong moral taboos) [Turnbull (1962)]. "Simple" societies like these are perhaps the most manifestly clear examples of Santayana's "natural society."

These societies are "simple" from the point of view that their people do not have complicated legal codes to govern the community and settle disputes. But does this mean there is no practical notion of *justice* in their society? I argue that quite the opposite is true. Without codified laws there certainly are no *legal* punishments for societal transgressions; however, there *are* quite potent *social* punishments. Turnbull reports,

> Roughly, there were four ways of punishing offenses, each operating as an efficient deterrent but without necessitating any system of outright punishment. In a small and cooperative group no

> individual would want the job either of passing judgment or of administering punishment, so like everything else in Pygmy life the maintenance of law was a cooperative affair. Certain offenses, rarely committed, were considered so terrible that they would of themselves bring some form of supernatural retribution. Others became the affair of the molimo, which in its morning rampages showed public disapproval by attacking the hut of the culprit, possibly the culprit himself. Both these types of crime were extremely rare. The more serious of the other crimes, such as theft, were dealt with by a sound thrashing which was administered cooperatively by all who felt inclined to participate, but only after the entire camp had been involved in discussing the case. Less serious offenses were settled in the simplest way, by the litigants themselves either arguing out the case or engaging in a mild fight. [Turnbull (1962), pp. 110-111]

Of course, even "supernatural retribution" would get a helping hand by the offended group. Turnbull described one serious case where a young man named Kelemoke was chased out of the camp by other youths carrying spears and knives. Turnbull asked a young man named Kenge what was going on. Kenge explained that Kelemoke had "committed incest" and added,

> "He has been driven to the forest," he said, "and he will have to live there alone. Nobody will accept him back into their group after what he has done. And he will die because one cannot live alone in the forest. The forest will kill him. And if it does not kill him, he will die of leprosy." [*ibid*., pg. 112]

There *is* more to the story; the Kelemoke incident also incited a noisy uproar in the camp. However, this did not last very long, the older men and "cooler heads" prevailed in quieting things down again, and minor property damage that occurred during the uproar was repaired and set right again the next day. Even Kelemoke was eventually "paroled" – apparently the "incest" was actually a case of taboo flirting that hadn't gone too far yet – and accepted back into the group. Turnbull reports that he was rehabilitated by his brief exile and never repeated his offense.

Turnbull's report tacitly underscores some important characteristics of BaMbuti justice. First and most important, it underscores the vital importance of *preserving the social group*. Individuals and individual families could not survive alone in the forest. There wouldn't be enough people to engage in a successful hunt or gather enough food through foraging. Turnbull explains,

> Cephu's family was large, but not large enough, even with all his in-laws, to form a hunting group of his own. To do this you have to have at the very least six or seven individual families, each with its own hunting net; only in this way can you have an efficient net hunt, with the women and children driving the animals into the long circle of nets, joined end to end. Cephu's group was usually not more than four families, so he tacked himself onto [the families of] Njobo and Ekianga. [*ibid*., pg. 37]

Second, a key element is *making punishments fit the crimes*. Here I use the word "crime" to mean transgression of the group's mores and folkways. Turnbull described another case, this one involving an accusation of poaching leveled against the man named Cephu:

> It cannot be said that Cephu went unpunished, because for those few hours when nobody would speak to him he must have suffered the equivalent of many days solitary confinement for anyone else. To have been refused a chair by a mere youth, not even one of the great hunters; to have been laughed at by women and children; to have been ignored by men – none of these things would be quickly forgotten. [*ibid*., pg. 109]

Mores and folkways are not "laws" in the legal sense, but they can be made just as binding, or even more so, on the individual. In Cephu's case there was retribution involved – he made restitution by turning over the meat from game he had "poached" from the group during a hunt – in addition to the punishment described above, which was a form of retribution by social ostracism. The penalty was "fair" in the sense that the same thing would have happened to anyone else for the same transgression and Cephu was not

made to suffer any worse penalty than anyone else would have. *Fairness* can seen as another characteristic of the BaMbuti notion of justice.

Mores and folkways can be properly regarded as the *moral customs* of a people, with the adjective "moral" referencing the context of a custom to judgments of right vs. wrong or good vs. evil. In greater part, such judgments are more aesthetical than intellectual. Santayana held that

> The relation between aesthetic and moral judgment . . . is close, but the distinction between them is important. One factor of this distinction is that while aesthetic judgments are mainly positive, that is, perceptions of good, moral judgments are mainly and fundamentally negative, or perceptions of evil. . . . The truth is that morality is not mainly concerned with the attainment of pleasure; it is rather concerned, in all its deeper and more authoritative maxims, with the prevention of suffering. . . . The sad business of life is . . . to escape certain dreadful evils to which our nature exposes us [Santayana (1896), pp. 16-17].

Within a small population, aesthetic accord in regard to "proper" or "correct" behavior is easier to reach than it is within a large population, and consensus in judging causes of suffering is likewise easier to come to. Codification of rules and laws is of little importance to a *Gemeinschaft* Community because of this. When *everyone's* welfare hinges on the cohesion of the community, the "dreadful evil" threatened by a disruption of domestic tranquility – namely, the disintegration of the community itself – is more or less readily apparent to everyone in a small population even if people do not stop to logically dissect and analyze the cause of disruption. Herein lies the original formation of moral customs and the primary source of their inertia over time.

And here, also, we find an important clue to the answer to our earlier question, "Does justice logically antecede law or do laws logically antecede justice?" In humanity's climb from the Paleolithic age to the present, *justice preceded law*. In summary: (1) study of the simplest *Gemeinschaft* communities still existing today (and serving as models for prehistoric human communities) suggest that some notion of "justice" predated the invention of laws in the earliest city-states; (2) preserving the community appears to be its first principle; (3) retribution and retaliation, subject to the limiting condition of making the punishment fit the crime, are characteristics of justice; and (4) fairness (in the sense that punishment for a particular offender was to be no worse and no better than punishment would be for any other offender), is another characteristic of the notion of justice.

3. Enter the Philosophers

At the top of every one of the ancient Mesopotamian city-states stood an absolute ruler at the head of an army. Further expansion of the state always proceeded by means of armed conquest with subjugation of the conquered people it drew into itself. Durant noted,

> It is war that makes the chief, the king, and the state, just as it is these that make war. [Durant (1935), pg. 22]

Within a few generations the descendants of those conquered people have grown up knowing no other way of life than that presented in the state. The passage of time led to habits of living in the state environment, and these habits brought pacification of the conquered people. Durant wrote,

> Time sanctifies everything; even the most ardent theft, in the hands of the robber's grandchildren, becomes sacred and inviolable property. Every state begins in compulsion; but the habits of obedience become the content of conscience . . . [For] however the state begins, it soon becomes an indispensable prop to order. A state which should rely upon force alone would soon fall, for though men are naturally gullible they are also naturally obstinate, and power, like taxes, succeeds best when it is invisible and indirect. . . . Above all, the ruling minority sought more and more to transform its

> forcible mastery into a body of law which, while consolidating that mastery, would afford a welcome security and order to the people, and would recognize the rights of the "subject" sufficiently to win his acceptance of the law and his adherence to the State. [*ibid*., pp. 24-25]

As we have seen in the first section of this chapter, the legal codes established in these ancient states had a "case law" and obviously *ad hoc* character. Lawmaking was not a science but, rather, a craft for which expedience was its guide and personal prudence on the part of the subjugated individual the principal aliment on which "law and order" thrived. If someone wondered, in the privacy of his thoughts, what gave his masters the right to command his obedience and submission, prudence answered, "Might makes right." Laws were proclaimed to be commandments of the gods or to flow from the wisdom of magi or sages. Conditions remained so for two millennia after the appearance of Sumerian civilization and rarely did anyone question aloud what "just" or "unjust" meant or what "justice" was.

In the 4th century BC, two hundred years after the birth of philosophy in ancient Greece, philosophers began deliberately asking these questions and seeking rational answers to them. The practice of philosophy grew up slowly from its beginnings with Thales of Miletus (*c*. 624 to *c*. 545 BC), reaching its first systematic flowering in Athens with Socrates (*c*. 470-399 BC), Plato (*c*. 428 to *c*. 347 BC), and Aristotle (384-322 BC). Socrates left behind no writings and it is often difficult to distinguish his philosophy from that of his student, Plato, from Plato's dialogues. Socrates had another student, the Greek historian Xenophon, in whose writings we can find some descriptions of Socrates that accord with what Plato presents him as saying. It is not unlikely that in these accordances we catch a glimpse of Socrates himself.

The earliest philosophy of justice appears in Plato's writings. It cannot be said that Plato presents a clear and crisp explanation of what "justice" means. According to Plato, justice is a "virtue" and holds a central position in his theory of ethics. In *Republic* Plato presents a lengthy debate on the topic between Socrates and several young men. The latter espouse the position that might *makes* right and justice is mere expediency. Socrates counters that power can be both unjustly or justly used, that justice is the measure of men and states, and that it cannot be measured by utility. Another and similar argument appears in *Gorgias*. But as to the question, "What is justice?" Plato never provides an unequivocal answer. He winds up Republic with a myth which demonstrates that, metaphysically[5], his thesis is a theology. As Zeller concluded,

> The philosophy of religion occupies no special place in Plato's system, but on both its critical and positive sides it runs through his whole thought and culminates in the idea of the good which he identifies with God. [Zeller (1980), pg. 129]

Like Plato, Aristotle sees justice as a virtue but he does not see it in quite the same way Plato does. He distinguishes two applications of the idea of justice. The first application is justice as a virtue of personal character; the second application is justice as a virtue of political institution insofar as that institution is instituted in such a way as to promote and secure happiness for its people. He writes,

> It is clear, then, that there is more than one kind of justice and that the term has another meaning besides Virtue as a whole. [Aristotle (*c*. 340 BC) $1130^{b}6$-9]

Aristotle ties the idea of justice to the topic of virtue through ideas of morality by saying,

> Now we observe that everybody means by Justice that moral disposition which renders men apt to do just things, and which causes them to act justly and to wish what is just; and similarly by Injustice that disposition which makes men act unjustly and wish for what is unjust. Let us then assume to start with

[5] A metaphysic, in its basic essentials, is no more and no less than "the way one looks at the world."

> that this is broadly correct. [*ibid*. 1129[a]6-12]

Broadly correct perhaps, but if justice is a "moral disposition" understanding justice in these terms is a formidable task. How does he approach it? We gain an important insight into his thinking near the very beginning of his *Nichomachean Ethics*:

> Our discussion will be adequate if it has as much clearness as the subject-matter admits of; for precision is not to be sought for alike in all discussions any more than in all the products of the crafts. Now fine and just actions, which political science investigates, exhibit much variety and fluctuation, so that they may be thought to exist only by convention and not by nature. . . . We must be content, then, in speaking of such subjects and with such premises to indicate the truth roughly, and in speaking about things which are only for the most part true and with premises of the same kind to reach conclusions that are no better. [*ibid*., 1094[b]10-25]

The customs of a society do constitute a "convention" of sorts because the people of that society for the most part remain within the boundaries of the civic and civil behavioral expectations they prescribe. As Hume said, "Custom is the great guide of human life." Aristotle proceeds by setting out a number of examples of what Athenian society regarded as "just" and "unjust" behaviors after first telling us,

> Now the term unjust is held to apply both to the man who breaks the law and to the man who takes more than his due, the unfair man. Hence it is clear that the law-abiding man and the fair man will both be just. The just therefore means the lawful and the fair[6], and the unjust means the illegal and the unfair. [*ibid*. 1129[a]:30-1129[b]:2]

Lawfulness and fairness, then, are two of Aristotle's principles of justice. There is, of course, an issue with this because it seems to presuppose that laws are always just. However, Aristotle was Plato's student and so would know the story of Socrates' trial, conviction, verdict of death, and his subsequent drinking of the hemlock. He would also know Plato's *Crito*. In this dialogue Crito offers to arrange for Socrates to escape from prison and flee the city. Socrates refuses and explains that he accepts his death penalty because, having agreed to abide by the laws and the judgments of the courts, he would be unjustly doing harm to the people of Athens if he escaped and fled the city. For Aristotle the issue is not whether laws are just or unjust but, instead, the principle is that one must obey and submit to the law and the courts because one has sworn to do so. To do otherwise, Aristotle holds, is to threaten the very existence of the society:

> Justice in the form of reciprocity is the bond that maintains the association . . . The very existence of the state depends on proportionate reciprocity; for men demand that they shall be able to requite evil with evil . . . and to repay good with good – failing which no exchange takes place and it is exchange that binds them together. [*ibid*. 1132[b]:33-1133[a]:3]

It is not difficult to find people who disagree with this principle of fealty to law. Thoreau wrote,

> Unjust laws exist; shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as [the US government] think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. *It* makes it worse. [Thoreau (1849), pg. 7]

Aristotle and Thoreau are on opposite sides of the argument over this principle of "fealty to law because it

[6] το ίσον, literally "the equal" but when applied to a person means "the fair."

is law." The argument goes to the heart of the idea of justice as a virtue of political institution. The general principle – fealty to law – is still largely presumed by nations in modern times. In the US, the courts do not rule on whether a law is unjust or just; they rule on whether or not a law is unconstitutional. The issue raised by the principle has been with us for a very long time.

In Aristotle's view the administration of justice must make allowances conditioned by whether a person's actions are voluntary or involuntary. Such allowances are familiar to us today, e.g., in the legal distinctions between premeditated murder, involuntary manslaughter, and accidents. These distinctions go to the just assignment of culpability and to determinations of compensation for damages or injuries. He also acknowledges that judges can make mistakes and draws a distinction between deliberately malicious rulings and those rendered due to "ignorance" on the part of the judge. He holds the former to be unjust but the latter to not necessarily be unjust. He devotes a great deal of discussion to hairsplitting distinctions between "an unjust person" vs. "an unjust act" and "a just person" vs. "a just action."

In part such considerations are attempts to sort out "legal justice" from what he calls "natural justice." Aristotle believed people have a social instinct (i.e., human beings are social by nature rather than by acquired habit). For instance, he regards an action committed in the heat of passion without premeditation to be an involuntary action which is culpably unjust in some circumstances but without culpability in other situations. Aristotle's vague idea of "natural law" was accepted by some later scholars such as Thomas Aquinas and its shadow can also be detected, for example, in some aspects of Islamic law such as the law requiring women to wear veils so as not to excite men into committing sexual assaults in a fit of passion. Aristotle presents no clear principle regarding "natural law." Presumably, although he never discusses the topic, a hermit would have to be seen as a sort of madman because his lack of a "social instinct" would have to be seen as an aberration in his "nature" rather than as empirical evidence that there is no such thing as a "social instinct" in human beings.

Finally, Aristotle's twofold division of justice in terms of personal character and political institution leads him to recognize a twofold distinction of "distributive justice" and "corrective justice." Such things as payment for services rendered and distribution of honors, he holds, must be based on fair proportions. This extends to such things as fair interest rates for loans, fair compensation for goods and services, etc. It is plain, he tells us, that one should justly receive what one merits, and that either more or less than this is unjust. At the same time, he acknowledges that people disagree about what is or is not merited. One of the roles of a *judge*, he tells us, is to insure that equity in distribution is achieved. Aristotle was no egalitarian. Sometimes equal shares in a distribution is just; sometimes it is not. He points out that "democrats" often have very different ideas from "aristocrats" over what is or is not merited.

Corrective justice is justice concerning penalties imposed for wrongs or injuries. The penalty should be proportionate with the severity of the wrong committed. Aristotle is clear that "reciprocity" and justice are not the same thing. In some cases it is just for a person simply to pay for the damages or compensate for the injuries he has caused. In other cases it is just that the offender suffer something additional as well. The role of the judge is to determine what is equitable and fair for not only the offended party but for society as well in accordance with the society's accepted norms and standards.

Although he presents many *ad hoc* examples, Aristotle never succeeds in presenting generalized principles for determining just vs. unjust decisions by judges. He states that disputes and accusations of alleged criminality must be adjudicated by skilled and learned judges who are themselves men possessing the virtue of "being just" but he is vague about how one ascertains the virtue of a judge. He does write at length about arithmetic and geometric reasoning in determining what is just or unjust but these ideas are more metaphorical than practical and it would be incorrect to conclude he has solved the problem of how to render fair and equitable judgments. At the same time, though, it is clear enough that administration of justice places great responsibilities on and expectations of a judge:

> This is why when disputes arise men have recourse to a judge. To go to a judge is to go to justice for

> the ideal judge is, so to speak, justice personified. Also, men require a judge to be a middle term or medium . . . for they think that if they get the mean they will get what is just. Thus the just is a sort of mean inasmuch as the judge is a medium between the litigants. [*ibid*. 1132ª:19-24]

Aristotle makes it very clear that the principal responsibility of a judge is *justice,* not law. He is clear that there is more to justice than the law alone and that society expects more of a judge than administration of statute law. A judge is to be "justice personified," not merely "legality personified." This principle is one that Western nations today overlook by and large.

To summarize, Aristotle's principles of justice include: (1) fairness; (2) fidelity to law; (3) allowance for distinctions between actions committed voluntarily with premeditation and those which are committed either without premeditation or by unintentional accident; (4) fair proportion in distribution (based on merit); (5) equality in corrective justice; and (6) judges are to act to uphold justice, not merely administer the law.

4. The Decline of Philosophy and Development of the Roman Legal System

Greek philosophy reached its zenith with Aristotle. After him history saw a decaying philosophy with a number of "schools" – the Stoics, the Epicureans, the Skeptics, the Cynics, the Neoplatonists – who had many conflicting views. Greek philosophers became more absorbed with questions of morality, ethics, and moral relationships, markedly less interested in empirical science, and increasingly theological in their doctrines and thoughts. Aristotle's vague reference to "natural justice" and Plato's more-theology-than-philosophy writings can be seen flavoring the characteristics of these later philosophies.

There was little to no empirical investigation into the nature of justice. Rather, thoughts concerning the questions of "What is just?" and "What is unjust?" by and large became merely fiat answers that differed according to each school's views of morality, virtue, ethics, and theology. While the Greeks did establish many excellent municipal legal codes, they never codified a system of laws. After Rome conquered Macedonia in 168 BC and then Greece in 146 BC, Greek philosophies gained a foothold in Roman education. Stoic philosophy became the semi-official philosophy of the Romans but Epicureanism and the skepticism of the remnant of the Academy originally founded by Plato were also influential and helped give rise to that peculiarly Roman habit of thought known as Eclecticism. Much later Neoplatonism and Eclecticism, as amended by St. Augustine of Hippo, were very influential in the early religious doctrines of Christianity and the Eastern Roman Empire, and exerted an influence on Justinian's Code that has been extended forward to modern times.

From the start, the Romans were a thoroughly practical and pragmatic people as well as a very orderly and militant society. They were also a pious people and religion permeated nearly every aspect of Roman life [Durant (1944), pp. 58-67]. They had very little interest in science but very deep interest in engineering. Their skill at it was a marvel to people for centuries up to the present day. After the conquest of Greece many upper class Romans developed a dilettante fondness of philosophy but it is more accurate to say Rome had a number of *writers* on topics of philosophy and theology but no original *contributors* to the advancement of philosophy. Romans whose philosophical writings were influential in the centuries afterwards include Lucretius, Cicero, and Seneca. Romans whose theological works had long lasting influence include Cicero, St. Augustine of Hippo, and Boethius.

Whereas Greece bequeathed to the modern world democracy and philosophy as the foundations of individual liberty, the legacy of Rome lies in its laws and its traditions of administration as the bases of social order. Indeed, *social order* (rather than abstract theories of justice) can be seen as the first principle of the Roman legal system from its primitive roots in the Roman Republic (*c*. 509 BC) to the beginning of the collapse of the Roman Empire *c*. AD 192. The Roman legal system as it stood in the 2nd and 3rd centuries AD is the basis of Western civilization's later legal systems. It is not an accident that the legal

vocabulary found in *Black's Law Dictionary* contains so many Latin words and phrases.

Of course, maintaining social order was certainly the unspoken purpose of laws in the ancient kingdoms of Mesopotamia. Kings can only rule over their subjugated people if those people are forced to obey and do obey their rulers. What is different about the Roman Republic is that most of its laws came from the Roman citizens themselves expressed in their various Assemblies. The Roman Senate, in theory, had no lawmaking power in the Republic. Instead they made recommendations to the Roman magistrates. These recommendations gradually became more directive as the centuries passed until, in the time of the Roman Empire, they acquired the force of law. Minor and more specific laws were made by edicts issued by municipal officials. It was not until the 2nd century AD that "the statutes of princes" became a source of laws for Rome, and by this time their Republic was long dead and the Empire had taken its place.

Unlike the unsystematic, sometimes chaotic, and occasionally schizothymic character of Athenian law, the Romans devoted a great deal of effort to erect a *legal system* that both served preservation of order *and* allowed for *evolutionary* changes in the laws as a need for them became apparent. Like the other ancient civilizations before them, Roman law was initially bonded to religion and it never fully lost this connection. Sometime around 450 BC the first written Roman laws were set out in the Twelve Tablets, which are thought to have been compiled from examples taken from municipal codes of Greek cities. The Twelve Tablets were approved by the Romans' Plebian Assembly after argument and debate over their contents. The text of the Twelve Tablets has not been preserved and it is hypothesized that they were destroyed when the Gauls sacked Rome in 387 BC.

Credit for the beginning of Roman legal science is usually given to Gnaeus Flavius around 300 BC. Flavius is said to have begun the systematizing of Roman legal terminology and ending the monopoly priests had held over administering the law. Sometime around the beginning of the 1st century BC Quintus Mucius Scaevola published an extensive treatise on Roman civil law that was influential for centuries. Again, though, this writing has not survived and what is known of it comes from other ancient writers who commented on it. Cicero studied law under Scaevola.

A legal system that actively developed, grew, and evolved from around 509 BC to around AD 192 can be expected to become quite voluminous and very complicated. Some sense of this size and complexity can be appreciated by looking at the required education and internships present day American lawyers must go through before they are allowed to practice law. Durant provides a summary overview of Roman law [Durant (1944), pp. 391-406] and many scholarly papers and books are readily available that present more detailed descriptions of the Roman legal system. The point I want to make here is that the scope and size of Roman *law* is such that a search for its principles of *justice* cannot follow the method of simply examining the laws themselves in the manner used in section 1 earlier. The Code of Hammurabi is to Roman law what a grass hut is to the Great Pyramid of Giza. We must find a more practical way to seek out Roman principles of justice.

One of them is fairly obvious just from the source of this research task, namely, that Roman law *did* grow, develop, expand, and evolve over time even as the Roman principle of *social order* remained invariant. The principle follows immediately: *laws must adapt to accommodate changing social needs and circumstances*. This seems to imply that whatever *justice* might be, it is not something to be seen as static and unchanging. Evidence of this principle of adaptation of laws likewise appears in archeological evidence of Hittite laws and the Code of Hammurabi. The principle is not confined to Rome alone.

Another hint at the character of Roman justice is provided in decrees issued by the Roman emperor Titus Aurelius Antoninus Pius (AD 86-161). By this time the old Roman Republic had long devolved into the Roman Empire[7] and the empire was nearing the end of its principate stage and the beginning of its collapse into anarchy (*c*. AD 193) and final fall. Antoninus decreed: (1) cases of doubt should be resolved

[7] It can be argued that the death knell of the Roman Republic sounded the day Caesar crossed the Rubicon in 49 BC.

in favor of the accused; and (2) a man should be held innocent until proven guilty. That he had to issue these decrees at all hints that something had gone wrong in the legal system in such a way that some principle of fairness to the citizen was being violated too often by the legal system. Antoninus' decrees have been passed down to our time and are to this day an important part of the US legal system.

The Romans were a conservative society, suspicious of rapid change, and clinging tightly to traditions, ceremonies, and rules they called *mos maiorum* ("customs of our ancestors"). The English word "mores" derives from *mos* and *mos maiorum* refers to the mores and folkways of the Roman people. From the establishment of the Republic in 509 BC until its collapse into Empire around 30 BC, the mores and folkways of the Roman people *constituted*, albeit in unwritten form, the foundations of their institutes and their laws. What stood in conformity with *mos maiorum* was "just"; what was in contradiction with it was "unjust." We may note that exactly the same thing is seen in BaMbuti society (allowing for differences in the mores and folkways of these two Societies). Let us call this *the principle of fidelity to* mos maiorum. Domingo remarks:

> The Roman jurists did not develop a theory of the foundation of justice, and they did not discuss its nature, as Greek philosophers did. Although in their high moral consciousness Roman jurists captured the concept of substantive justice, they rarely appealed to the ethical foundations of justice, probably because of the simplicity of their legal style and their intuitive resistance to abstraction. In their instructional writings, they just accommodated Greek philosophy to the Roman spirit and character. [Domingo (2017)]

This pragmatic-minded and foundationally morality-based character of the Romans partially explains the difficulties the modern age encounters in translating the Latin word *ius*. Domingo writes,

> *Ius* is an ambiguous word that could be used in the singular (*ius*) or plural (*iura*). There is no Greek equivalent for the Latin word *ius* nor does it have an exact equivalent in English, although many English words come from *ius*: justice, jurisprudence, jurist, adjudication, jurisdiction, among others. Most of the time, *ius* should be translated as "law" (or "the laws") in the objective sense of a legal order or a whole body of norms, rules, and standards, but sometimes it can mean "right" in the many subjective senses of this English word. In the broadest sense, *ius* embraced the whole of the Roman legal system . . . The legitimacy of *ius* lay in the tradition of the Roman community recognized by citizens. Norms, rules, standards, and statutes were not properly a new creation of the legal order but an expression of the vitality of that tradition of ideas, usages, and customs (*mores maiorum*). [Domingo (2017)].

We can also gain insight into Roman thinking and attitudes from the writings of ancient authors who lived and wrote during the twilight of the Republic and whose writings have been preserved. One source for this is Cicero. Cicero's *De Legibus* [Cicero (*c*. 43 BC)] is a philosophical treatise on law written from the viewpoint of his ontology-centered way of looking at the world. In this viewpoint his Eclecticism leans heavily on Stoic philosophy, from which Cicero declares and defends his belief in "natural law":

> [Now] let us investigate the origins of Justice.
>
> Well, then, the most learned men have determined to begin with Law, and it would seem that they are right if, according to their definition, Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law. And so they believe that Law is intelligence, whose natural function it is to command right conduct and forbid wrongdoing. They think this quality has derived its name in Greek from the idea of granting to every man his own, and in our language I believe it has been named from the idea of choosing. For as they have attributed the idea of fairness to the word law, so we have given it to that of selection, though both ideas properly belong to Law. Now if this is correct, as I think it to be in general, then the origin of Justice is to be found in Law, for Law is a natural force; it is the mind and reason of the intelligent man, the standard by which Justice and

> Injustice are measured. . . . But in determining what Justice is, let us begin with that supreme Law which had its origin ages before any written law or any State had been established. [Cicero (*c*. 43 BC), Bk. I, vi. 18-19 (pp. 316-319)]

Right from the start, Cicero premises the existence of some thing which, because it is "implanted in Nature," has to be viewed as a *super*natural thing. Today a great many people might instantly recognize this supernatural thing as God. Certainly Montesquieu held this sort of view:

> Laws in their most general signification are the necessary relations arising from the nature of things. In this sense all beings have their laws: the Deity His laws, the material world its laws, the intelligences superior to man their laws, the beasts their laws, man his laws. . . . There is, then, a prime reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another. [Montesquieu (1748), pg. 1]

Perhaps Cicero's natural law premise was religiously based; but it is also possible, perhaps even probable, that he premised it from Stoic philosophy since his description above accords nearly word for word with Stoic philosophy [Marías (1967), pp. 92-93]. All of the ancient systems of metaphysics were ontology-centered – with the possible exception of the philosophy of Protagoras[8] – and an ontology-centered way of looking at the world always leads inevitably to some kind of ultimate deity (whether this be a personified God, an impersonal "way of things," or some mathematical god of probability).

It follows from Cicero's premise, then, that Justice is derivative from and owing its existence to this reified idea of "natural law." Inasmuch as Stoicism was the most dominant character of Roman philosophy overall, it does not seem like a dangerous projection to assume the views he champions above to likewise be the views held by most Romans. Arguably Rome's most famous Stoic was emperor Marcus Aurelius (AD 121-180), whose *Meditations* endure as a potent expression of Stoic belief [Aurelius (175)]. From him we can see that Stoicism continued to hold sway in the Empire almost to the end of the principate period just before the anarchy began and the slow fall of Rome began to accelerate.

Cicero's "natural law" doctrine is the antithesis side of the question posed at the beginning of this chapter, i.e., "Does justice logically antecede law with laws then expected to serve justice? or do laws logically antecede justice and define it instead?" Section 2 of this chapter drew the empirical conclusion that some notion of Justice antecedes law, but Roman philosophy disagrees with this thesis. Science, the systematic doctrine of nature, cannot accept supernatural explanations but, likewise, can make no objectively valid statements of any kind about supernature – including the statement that supernature does not exist. But, at the same time, no doctrine of supernature can make any objectively valid statement about nature – including the statement that supernature is the cause of nature [Wells (2019)]. Open-minded scholarship demands we not regard the question as having been answered at this point. Therefore, let us continue and look at what else Cicero had to say.

Cicero next seeks to put his idea of natural law on firmer ground. Here, from the viewpoint of science, his argument is weakened by its obviously theological suppositions – which is, again, consistent with Stoic philosophy and the grounding it attempts to provide for both religion and nature. In his argument we also can discern elements of Roman Eclecticism. Cicero tells us,

> But what is more divine, I will not say in man only but in all heaven and earth, than reason? And reason, when it is full grown and perfected, is rightly called wisdom. Therefore, since there is nothing better than reason, and since it exists in both man and god, the first common possession of man and god is reason. But those who have reason in common must also have right reason in common. And

[8] Protagoras' works have been lost and so we do not actually know what his philosophy was. However, judging from his most famous remark reported by numerous ancient historians ("Man is the measure of all things"), his way of looking at the world (metaphysic) would seem to have been epistemology-centered.

> since right reason is Law, we must believe that men have Law also in common with gods. Further, those who share Law must also share Justice; and those who share these are to be regarded as members of the same commonwealth. . . . Hence we must now conceive of this whole universe as one commonwealth of which both gods and men are members. [Cicero (*c*. 43 BC), Bk. I, vii. 22-23, pp. 320-323]

According divine status to reason is not only a Stoic tenant but is found in Eastern as well as in Western philosophies and religions including, e.g., Taoism and Confucianism [Wells (2019)]. More pertinent to the topic of this treatise is Cicero's statement that "right reason is Law." But why must "those who share Law . . . also share Justice"? We saw Cicero state earlier that "the mind and reason of the intelligent man" equates to "the standard by which Justice and Injustice are measured" and that Law is a "natural force" (*naturae vis*). The literal meaning of *vis* is force, power, or strength but it also has the metaphorical connotation "essence." If Law is the origin of Justice, as he stated earlier, this is as much as to say Law is the *cause* of an *effect* called Justice. When we also remember that Cicero was a lawyer, politician, and statesman – and not a scientist – self-consistency in his thesis seems to mandate that we understand his use of the word *vis* in the metaphorical context. Furthermore, if Law is also regarded as "the standard by which Justice and Injustice are measured," then, as an essence, Law is a higher Object in which these two opposites are united. For Cicero, Law is a *noumenon* of the sort Kant called "a thing regarded as it is in itself" (*Ding an sich selbst*).

Also of pertinence is Cicero's statement that Law ("right reason") makes all men members of a commonwealth (*civitatis*). This seems to imply that Law is likewise the origin of bodies politic, i.e., of people's voluntary associations in peaceful communities serving a common purpose or purposes shared by all the citizens of that common community. We can only guess what he might have thought of a group of BaMbuti pygmies, a people whose social organization has strong moral customs but no codified laws, no lawgivers, no councils short of the entire community, and no chiefs or rulers. Here is a point at which his theoretical/speculative ideas of Law and Justice meet and run up against an empirically observable fact of experience.

Cicero continues his discourse at length with the topics of man's origin, nature and natural virtues in terms the strictest supporter to what today is called Intelligent Design theory would find unobjectionable. His discourse strictly follows the core tenants of Stoic philosophy and so, inevitably, must come to terms with the undeniable fact that *some* men act unvirtuously, have no regard for law, behave unjustly toward their fellow men, and do things that lead to strife and disorder. This he blames on "bad habits and false beliefs" [*ibid*., Bk I, x. 28-30, pp. 328-329]. He tells us,

> The similarity of the human race is clearly marked in its evil tendencies as well as its goodness. For pleasure attracts all men; and even though it is an enticement to vice, yet it has some likeness to what is naturally good. For it delights us by its lightness and agreeableness; and for this reason, by an error of thought, it is embraced as something wholesome. [*ibid*., Bk I, x. 31, pp. 330-331]

For the Stoics, "virtue" subsists in willing submission to whatever nature predestines. "The Fates guide the man who wishes to be guided," say the Stoics. "The man who does not wish to be guided they drag along." If, as Cicero maintains, all men are naturally virtuous, why then do some fail to exercise "right reason" and transgress the Law? It doesn't seem consistent to lay this off on "bad habits" or "bad teachers" or "poor upbringing" because all of these merely, as the saying goes, "kick the can down the road." *Why* are there bad teachers, poor upbringing, or varying inclinations to develop bad habits? Stoicism never quite succeeds in answering these questions if, as Cicero says, "we are so constituted by Nature as to share the sense of Justice with one another and to pass it on to all men" [*ibid*., Bk I, xi 33, pp. 332-333].

Aristotle famously wrote, "it is also plain that none of the moral excellences arise in us by nature, for nothing that exists by nature can form a habit contrary to its nature" [Aristotle *c*. 340 BC, 1103^{a}20]. Any-

thing properly called a *scientific* law *compels* the effect it is formulated to explain; a law does not "impel" the result as a mere "ought to." From a scientific viewpoint, then, this thesis of Cicero's can only be seen as a logical dialectic premised on articles of faith, where by "faith" I mean holding-to-be-true that which you know *might* instead be false. Cicero connects this "natural Law" *noumenon* to the world of human phenomena only by what is properly called a "leap of faith." He is, of course, not at all alone in this (as the Montesquieu quote above testifies). But this leap of faith places his natural Law argument squarely on the side of theology and not on the side of science.

The Roman Republic had already been an orderly society for three centuries (754-449 BC) before they ever produced their first written laws (the Twelve Tablets). The conduct of people's lives, in other words, was governed by mores and folkways (*mos maiorum*) long before they found a reason to codify laws. This is only surprising if we do not consider that the BaMbuti Pygmies – whose Society is millennia older than the Romans' – still to this day do not have any codified laws and govern themselves entirely on the basis of consensus democracy and their own mores and folkways. Regardless of whether or not one regards Cicero's "natural law" speculation as specious, it nonetheless is a fact that he tied this notion to *mos maiorum* in *De Officiis*, his monumental treatise on ethics [Cicero (44 BC)]. He wrote,

> You see here, Marcus, my son, the very form and, as it were, the face of Moral Goodness; . . . But all that is morally right rises from some one of four sources: it is concerned either (1) with the full perception and intelligent development of the true; or (2) with the conservation of organized society, with the rendering to every man his due, and with the faithful discharge of obligations assumed, or (3) with the greatness and strength of a noble and invincible spirit; or (4) with the orderliness and moderation of everything that is said and done, wherein consist moderation and self-control. [Cicero (44 BC), Bk I, v. pp. 16-17]

He goes on to say, a little later, "The foundation of justice[9], moreover, is good faith – that is, truth and fidelity to promises and agreements." [*ibid*. Bk. I. vii. 23, pp. 24-25] Cicero describes a sort of hierarchy of order in human relationships:

> Then, too, there are a great many degrees of closeness or remoteness in human society. To proceed beyond the universal bond of our common humanity, there is the closer one of belonging to the same people, tribe, and tongue, by which men are very closely bound together; it is a still closer relation to be citizens of the same city-state; for fellow-citizens have much in common – forum, temples, colonnades, streets, statutes, laws, courts, right of suffrage, to say nothing of social and friendly circles and diverse business relations with many. [*ibid*., Bk. I. xvii., pp. 56-57]

The raw phenomenon of human beings self-organizing into societies is, in some ways, one of those taken-for-granted marvels of human behavior. Cicero strove to explain this marvel by recourse to his speculative idea of "natural law" but, when it comes right down to it, it is not necessary to posit "natural law" to explain it; and there are other more practical and better grounded explanations for it [Wells (2012)]. In seeking principles for Roman justice, we need not lean on or rely upon the "natural law" explanation to legitimize the notion of "justice."

Mos maiorum did allow for retaliation and retribution for crimes and wrongs inflicted on others or on Roman society. This was, however, tempered by moderation so that revenge was *not* an element of *mos maiorum*. Cicero remarked,

> Again, there are certain duties that we owe even to those who have wronged us. For there is a limit to retribution and to punishment; or rather, I am inclined to think, it is sufficient that the aggressor should be brought to repent of his wrong-doing, in order that he may not repeat the offense and that

[9] *iustitiae*. The word means justice, fairness, equity.

> others may be deterred from doing wrong. [Cicero (44 BC), Bk. I, xi., pp. 34-37]

Cicero's mentioning of criminal punishments are so casual and almost *en passant* as to make it seem the Romans saw the need for official retaliations and retributions as clearly obvious to everyone.

This brings us, then, to six principles of justice we have been able to tease out of Roman law: (1) preservation of social order; (2) fidelity to *mos maiorum*; (3) adaptability of laws to accommodate changing social needs and circumstances; (4) fairness in the treatment of the individual citizen; (5) a principle of retribution; and (6) a principle of retaliation.

5. Summary of Ancient Principles of Justice

There is a high degree of similarity found in the various principles of justice adopted by the different ancient Societies. In some cases, where one Society expressly presents a principle but another does not appear to expressly mention it, it is possible the principle might be taken for granted in the latter as a matter of obvious common sense. This is not necessarily the case, however. In those cases of ancient Societies where we do not have detailed evidence of their laws, their Society might have recognized a principle without leaving behind evidence that they did so.

Gathering up those ancient principles identified so far, we have found:

1. a principle of preservation of social order;

2. a principle of fidelity to the society's mores and folkways;

3. a principle of retribution (punishment imposed for a wrong done to a person or to society);

4. a principle of retaliation (the act of doing someone harm in return for actual injuries or wrongs);

5. a principle of fairness and equity in the administration of the laws; by fairness I mean the quality of treating people equally or in a reasonable way; by equity I mean the absence of bias or favoritism;

6. a principle of protection of the person and property of the individual citizen;

7. a principle of protection of general and individual welfare;

8. a principle of establishing expectations for individuals' civic and civil duties;

9. a principle of proscribing: the telling of falsehoods; malice; violent actions; corruption and malfeasance; creating strife detrimental to domestic tranquility or the public welfare; or reckless behavior or malpractice (incompetent performance) that affects the welfare of a citizen or the public at large;

10. a principle of fair public regulation of commerce to safeguard public welfare;

11. a principle of adapting laws to accommodate changing social needs or circumstances.

We have also seen that acts of revenge (vindictive retaliation against a perceived or actual wrongdoer; infliction of punishment for the purpose of "getting even") was discouraged and often proscribed by the rulers of ancient civilizations. Officially sanctioned retribution and retaliation instead was often put in its place, although dividing lines between revenge and retaliation are thin in those societies where dueling was permitted. The primary difference between vindictiveness and officially prescribed retaliation lies in the difference between the *personal* nature of revenge vs. the *impersonal* nature of the rule of law. Revenge often leads to blood feuds and feuds tend to lead to *disorder* in a community or a society.

The eleven principles are somewhat generalized characterizations of what the ancient legal codes seem

to be trying to produce as outcomes. They do not serve to *define* justice, either singly or collectively, but they do indicate what people think "justice looks like" where one says it exists and is present. If we look no deeper than this, "justice" is merely a name given to an unknown cause of some kind of which legal decisions and procedures are seen as effects of this unknown cause. If one does not wish to inquire any deeper than this, it actually makes no real difference if "justice" is Cicero's supernatural *noumenon*, "natural Law," or if it is instead some kind of social dynamic of *human nature* that is evoked when people live together in a community or a Society. In the latter case, the eleven principles then become descriptions of the *appearances* of this dynamic.

Some people think, in agreement with Cicero, that the cause of justice is law. But in this case we must beware of confounding the different meanings of the word law, e.g.: natural law; laws of physics; socio-psychological laws of human interpersonal dynamics; statute law; case law; common law; etc. The word "law" takes on quite different meanings when used in these very different contexts.

A notion of natural law is always grounded in some idea of a deity. This deity might be a personified entity (as, e.g., is the case in the Christian, Islamic, and Jewish religions as well in the way the BaMbuti Pygmies regard the Ituri Forest). Or it might be a non-personified deity (as, e.g., is the case in Eastern religions such as Taoism and Buddhism) more or less described as "the way things are." Or there might be a mixture of supernatural personified entities (pagan gods, the Fates, etc.) obedient to a non-personified "natural order of things" (as, e.g., was the case of the Stoics, the ancient Epicureans, various sects of Hinduism, the Shinto religion of ancient Japan, and the ancient Nordic people of Scandinavia). In such cases, an ordinary person's understanding of what natural law prescribes and proscribes is dependent upon trusting the word of "wise men," lawgivers, or rulers who claim to have experienced some sort of divine revelation. Ur-Namma, for example, claimed that his laws expressed the wishes of the gods who had decreed he was to be the king of Ur. Generally speaking, the notion of natural law is a notion of some occult quality that admits to no systematic human understanding because anything at all can be offered an explanation by calling it, e.g., "the will of the gods." That which explains everything explains nothing.

For the case of the laws of physics (with its extensions into chemistry and biology), there is no concept of "justice" in the context at all. We do not say it is either just or unjust when an object falls to the ground as described by the "law of gravity." We do not say it is unjust when the toaster burns the toast. The notion of justice is impertinent to physics, chemistry, and biology.

In the case of the humane sciences (psychology, economics, etc.) there is likewise no *general* context of justice. Justice contexts only arise in the study of human behavior, and here science's interest lies in understanding that behavior. In all contexts where a concern for justice is either central to or of highest pertinence to the people involved, "law" invariably refers to either statute law, case law, or common law – all of which are legislated in one form or another by fellow human beings. To understand "justice" in the context of human nature is to understand why people do what they do when living with and alongside of each other. For the remainder of this treatise, we shall eschew all supernatural considerations and seek an understanding of justice *in human nature*. In doing so, we shall use the principles stated above to help guide the investigation.

6. References

Abercrombie, Nicholas, Stephen Hill, and Bryon S. Turner (2006), *The Penguin Dictionary of Sociology*, 5th ed., London: Penguin Books.

Aristotle (*c*. 340 BC), *Nichomachean Ethics*, (1) for the Greek text plus an English translation see *Aristotle XIX*, Cambridge, MA: The Harvard University Press; (2) for an alternate English translation see *The Complete Works of Aristotle*, vol. 2, pp. 1729-1867, Princeton, NJ: Princeton University Press. Quotations provided in this chapter are obtained using the Greek text.

Aurelius, Marcus (175), *Meditations*, in *Marcus Aurelius*, Cambridge, MA: The Loeb Classical Library,

Harvard University Press, 1994.

Cicero (44 BC), *De Officiis*, published as *On Duties*, Cambridge, MA: Loeb Classical Library, Harvard University, 1997.

Cicero (*c*. 43 BC), *De Legibus*, Cambridge, MA: Loeb Classical Library, Harvard University, 1994.

Domingo, Rafael (2017), "Roman Law: Basic Legal Concepts and Values," Jan., SSRN Electronic Journal, DOI: 10.2139/ssm.2989010 .

Durant, Will (1935), *Our Oriental Heritage*, vol. I of *The Story of Civilization*, eighteenth printing, New York: Simon and Schuster, 1954.

Durant, Will (1944), *Caesar and Christ*, vol. 3 of *The Story of Civilization*, New York: MJF Books.

Garner, Bryan A. (2019), *Black's Law Dictionary*, 11th ed., St. Paul, MN: Thomas Reuters.

Gurney, O.R. (1990), *The Hittites*, London: The Folio Society.

Marías, Julián (1967), *History of Philosophy*, New York: Dover Publications.

Montesquieu, Charles de Secondat de (1748), *The Spirit of Laws*, Amherst, NY: Prometheus Books.

Reber, Arthur S. & Emily S. Reber (2001), *The Penguin Dictionary of Psychology*, 3rd ed., London: Penguin Books.

Roth, Martha T. (1995), *Law Collections from Mesopotamia and Asia Minor*, Atlanta: Scholars Press.

Santayana, George (1896), *The Sense of Beauty*, New York: Dover Publications.

Santayana, George (1905), *Reason in Society*, vol. 2 of *The Life of Reason*, New York: Dover Publications.

Strong, James (2001), *The New Expanded Exhaustive Strong's Concordance of the Bible*, Nashville: Thomas Nelson Publishers.

Thoreau, Henry David (1849), *Civil Disobedience*, New York: Dover Publications, 1993.

Turnbull, Colin M. (1962), *The Forest People*, New York: Simon & Schuster.

Wells, Richard B. (2012), *The Idea of the Social Contract*, available free of charge from the author's website.

Wells, Richard B. (2019), *Faith and Critical Theology*, available free of charge from the author's website.

Zeller, Eduard (1980), *Outlines of the History of Greek Philosophy*, 13th ed., New York: Dover Publications.