

Writing and the Concept of Law in Ancient Greece

The concept of law is too often treated as an a-historical category; similarly, the impact of writing (when used as a medium of communication) on the conceptual order and on the social structure of a society has been little analysed. These two problems are brought together in the context of ancient Greece to demonstrate how the concepts "law" and "justice" developed in relation to changes in the social structure of that society. The impact of writing on Greek society not only produced the situation in which these changes took place but also helped form those changes.

For the purpose of this paper it is useful to differentiate two aspects of the impact of writing on a society, though in practice (as I note in my conclusion) it is impossible to have one without the other. Furthermore the two are not perceived as separable — or even, indeed, as existing in most cases — by societies which utilise writing. The first aspect might be called the conceptual, for here we are dealing with the different perceptions that societies might have of writing and how writing is assimilated, or not, into the world view of a society. Of course, world views are only such because they allow societies to operate on and in the real world, which is why the second aspect, the form of institutionalisation of writing in the society, is, in praxis, inseparable from the first. However, from the point of view of analysis, differentiation is necessary in order to allow the researcher to investigate how writing operates in a given society.

From this point of view the relation between writing and what in our society is termed "law," is very important because the concept of law cuts right to the root of the functioning of a social structure. Thus if writing comes to affect the legal concepts of a society, then it must also affect the social order itself.¹ In my discussion of early Greece I

demos or *ethnos* occupied a certain limited part of the Greek landscape, its visible political bonds were tribal unity and obedience to a particular chieftain or *basileus*.”¹⁴ He goes on to add that the *basileis* did not stand far above their fellow tribesmen and that they did not, themselves, have a monopoly of political (by which Starr also means legal) power. This was also located in village wise men and in priests and seers who gave the will of the gods.¹⁵

Thus we have a situation reminiscent of what Mair has called “minimal government.”¹⁶ That is, where society is not ordered on the basis of any overt, organised authority structure but rather is based on a coherent normative *Weltanschauung* in which certain embedded concepts operate to facilitate the continuity of order in the society. I would suggest that this situation follows from Mair’s assertion that “the inhabitants of a single homestead [to which I would add lineage group]¹⁷ always recognise the authority of their senior members.”¹⁸

This is because in a society where a more or less equal degree of authority is distributed among a large number of individuals, a perception of the world — an ideology — must exist among the members of the society which emphasises its *inherent* continuity and order. Were this ideology not to exist or to be rejected, then the society would inevitably fragment because in such a society there exists no single location of power and therefore no way of enforcing order.

As an illustration of this, in the Greek Dark Age great importance was attached to the “wise men” who, wise in their perception of the operation of their society, were able to arbitrate on matters the complexity of which questioned the normative order of the society. I use the term “arbitrate” because, as I wish to show below, the essential nature of non-literate society is that it must *appear* (rather than be) unchanging. This is not to lapse into the classical anthropological mistake of equating a concern with the appearance of lack of change with an historically unchanging society but to suggest that in non-literate societies the functioning of that knowledge/praxis area which we call law is to preserve the continuity of the society through an apparent denial of change.

Van Groningen has pointed out in *In the Grip of the Past* the Greek preoccupation with the relationship between the present and the past which was of continual concern to that society once writing had come to be used for communicating information.¹⁹ This concern with apparent lack of change is in contrast to highly literate societies where the law is concerned with individual and state rights, where change is

articulated through the writing and re-writing of laws, and where continuity is exercised through the execution of those laws by the imposition of power. Thus Gluckman suggests that for the Barotse "the aim is to reconcile the litigants," and that this stand is possible because "Barotse is, or was, a homogeneous society, all of whose members accept the same standards of right-doing as the judges."²⁰ Moore emphasises this point by her restatement of the problem of strict liability as this term applies to non-literate societies. She suggests that, contrary to the ideology of justice in literate societies: "Some instances of strict liability in tribal societies can, perhaps, be most simply explained by arguing . . . that in certain social situations the resentment of the injured or damaged must be assuaged if social relations are to go on, whether or not the injurer was apparently at fault."²¹ In other words the most important factor is the preservation of social equilibrium through reconciliation. Often, of course, equilibrium can only be restored by a redistribution of goods.

An analogous perception of the ordering of the world and human relationships may be found in ancient Greece. Let us turn first to the term *nomos*. Ostwald, who has written extensively on the Greek use of this term, informs us that "[Hesiod is] the earliest author to use *nomos* [and] is also the first to employ the term in its widest range."²² He goes on to remind us that *nomos* here does not carry the implication of "law" or "ordinance" but "designates the behaviour itself."²² The most general meaning of *nomos*, which is also its earliest extant written (*sic*) meaning, is that of "an order of living, a way of life."²² Thus it might be suggested that a term which later came to mean custom or customs, carrying for the Greeks, as for us, its connotations of relativity — each society has its own *nomoi* by the time we reach Herodotus²³ — in some period before Hesiod referred to the only conceivable order, which would therefore be the correct — the just — order. Before we develop this argument any further, we must take cognizance of Vlastos' point that "the expression [cosmic justice] is redundant in Greek since *Kosmos* itself means a just order."²⁴

Vlastos cites Solon as a justification for this comment which goes some little way towards evidencing the resistance to change of the Greek *Weltanschauung*, because even for Hesiod the *nomos* is split: Zeus has created one behaviour for beasts and one for man. However that may be, if *nomos* is the order by which man lives in society, what we may ask — unlike the earliest Greeks — is the basis of that order? Bearing in mind Ostwald's point that "the etymological method is

fraught with . . . danger,"²⁵ we can read on that "there is universal agreement, as far as I know, that this noun is derived from the same root as *nemo* whose basic concept involves a 'distribution' or an 'assigning' of some sort."²⁶ Thus it could be suggested that in the Greece of which we have no written record — in non-literate Greece — harmonious order, which I have termed social equilibrium, was maintained through some taken-for-granted idea of distribution.

In order to emphasise this point we may look at what differentiates the *nomoi* of beasts and of man for Hesiod; it is the idea of *dike*. The development of the idea of *dike* as justice in relation to the increased use of writing by the Greeks has been analysed by Havelock.²⁷ Here I wish to refer to what Havelock says of justice in the *Iliad*: "Justice, whatever it is, can be seen as something exchanged between two parties, or added to both, in the course of a settlement; or, alternatively, as symbolizing the process of exchange itself."²⁸

To expand on what has been written above, we might surmise that, at the time the *Iliad* was sung, the taken-for-granted *nomos* was preserved by the exercise of *dike*.²⁹ Justice here, then, refers to the continuous process of ordering, not to an abstract concept hedged by moral judgements and in relation to which the individual has rights, the last being more how we moderns understand the term. Indeed, Hesiod's use of the term *dike* to differentiate man from the beasts would appear to be a movement towards our usage of the term.³⁰

The link suggested earlier between social equilibrium and reconciliation is important because in high literate societies the idea of law is related to the idea of the exercise of punishment by means of sanctions.³¹ In non-literate societies in what we tend to call civil disputes, or disagreements relating to problematic relationships, reconciliation is achieved by judgemental insight. This is true only to a limited extent in literate societies.³²

In what we might call criminal disputes, however, where a member of a society has apparently infringed a well-known norm, the reparation asked of that person — or his kin group — would appear to be not punishment in our sense but a donation, the equivalent in quality to the disruption caused in the functioning of the social structure.³³ This is born out by the statements in many anthropological works³⁴ which indicate a degree of variability of the donation, dependent on not only the importance attached to the norm infringed (something which remains true in literate societies) but also the nature of the kinship relations between the parties concerned.³⁵ Thus this reparation,

which is usually seen in terms of punishment/compensation, should really be seen as a restoration of structural equilibrium.

It was suggested above that in early Greek society there was a link between the generalisability of the idea of *nomos* and the degree to which it was taken for granted. Whilst we are unable to ascertain what happened in that society when an individual stepped outside of the *nomos*, we may look at non-literate societies studied by anthropologists who inform us that there is a difference in treatment accorded to individuals who deviate occasionally as compared with those who do so regularly. In the former case social equilibrium can be maintained; in the latter the individual is either killed or banished — in other words he is no longer perceived as a member of the society.

Hoebel, for example, shows that the Eskimo draw a distinction between murder and homicidal recidivism. In the former case numerous social obligations are placed on the murderer and his victim's relatives. In the latter case, where the murderer obviously does not accept the society's perception of the world by continually ignoring the obligations asked of him, he may be killed by any member of the community, provided the community has given its agreement.³⁶

As this may appear a rather extreme example, another may be of use. Goldschmidt in his book on the Sebei writes of recidivist theft: "The victims of the thief ask his clansmen to take action against him, with the result that the clansmen either restrain him or kill him. If they refuse to do so, these outsiders may avenge themselves against any member of his clan, or may kill him with impunity."³⁷ It may be suggested that non-literate Greece applied the same solution.

What the Greeks thought might happen when an entire society lacked the reciprocal basis of social equilibrium is well illustrated by the cameo story of the Cyclopes in the *Odyssey* who, we are informed, lack *themis*. *Themis* is the word most often used in the *Iliad* and the *Odyssey* that tends to be translated with legislative overtones. Havelock, for instance, translates *themis* as "oral law"³⁸ and when deified, as the Goddess of Law.³⁹ However, when what has been said above concerning *nomos* is taken into account, it is obvious that *themis* cannot mean anything like what we understand by law. Jaeger points out that "etymologically the word means institution."⁴⁰ Perhaps the place in the *Iliad* where the word most tends towards its original meaning is in the phrase: "Let there be one ruler, one king, to whom the son of devious, devising Kronos gives the sceptre and [*themistas*] right(s) of judgement to watch over his people."⁴¹

However, even here where the institution of kingship is being articulated, the idea of law as an institution in its own right is not present. Instead, *themis* refers to the judging (I would prefer to say ordering or re-ordering) act. Moreover this decision is based on, and given through, the order of society, thus keeping the society in harmony with “the institutions set up by Zeus. . . .”⁴² In other words we could say that *themis* as judgement and as institution are inseparable because, since *themis*, or *Themis*, represents an aspect of the established harmonious cosmic order, it manifests and justifies itself as institution through its operation of preserving order. Thus lack of *themis* must also imply the lack of society, as in the case of the Cyclopes: “The Cyclopes have no assemblies for the making of laws, nor any settled customs, but live in hollow caverns in the mountain heights where each man is law-giver to his children and his wives, and nobody cares a jot for his neighbours.”⁴³

The idea of an organised system of established relationships — Maine’s status relationships governing and fixing the nature and organisation of economic reciprocity and thus reinforcing the order of the society — has been well outlined by Sahlins.⁴⁴ As further evidence of the link between the social order and the economic order in the context of Greek society, the fact that cognates of *nomos* refer to pasturage, herdsman, and roaming about for pasture may be mentioned.⁴⁵ The importance of this conceptual link may be illustrated by returning to the Cyclopes for a moment. In spite of the fact that they kept sheep — which allied them to mankind through the conceptual links of *nomos* — they did not, we are very emphatically informed, farm crops.⁴⁶ Thus once again, they are only half within the human *nomos*. Analogously, I would suggest, the Cyclopes did not have laws, nor did they trade with other nations as did the Greeks, nor indulge in establishing the reciprocal action of giving gifts to strangers who came as guests.⁴⁷ Throughout the Cyclopes’ activities there can be seen a link between the social and the economic,⁴⁸ but there still is no true *nomos*. The emphasis on the lack of foreign trade reminds us of ports of trade, discussed above, which had as one of their most important functions, the regularisation of interaction in the sense of appropriate equivalences between societies that otherwise have no connection. It would appear, then, that in non-literate societies law operates in a similar way to manifest and preserve social equilibrium through a reciprocity of equivalences. Lacking ports of trade, modern societies resort to that strange hybrid International Law.⁴⁹

The social organisation of the Greece of the Dark Age seems to fit very well the type of outline suggested above. From centralised societies, each under the kingship of a *wanax* and organised through centralised economic control made possible by the use for administration purposes of Linear B writing, the social organisation metamorphosed into small-scale units, each under the minimal control of a *basileus*, a term which in Mycenaean society appears to have referred to a minor official.⁵⁰ In Dark Age Greece it appears to be best translated as chieftain, a position carrying the minimal powers suggested above. However, over time it would appear that the *basileus* accrued more power until it is best to translate the term as king. This change, of course, occurred in different areas at different times, as did the subsequent shift from rule by a *basileus* to rule by *archons*. My object here is not to look at when such changes happened but at the conceptual shifts related to them in relation to the rise of writing.

In this governmental context, the shift in the use to which the term *demos* was put is important. Starr notes that in Homer the question often put to a stranger was “What is your *demos*?”⁵¹ and he then emphasises the vagueness of this term as a reference to a physical place. Rather, as would be expected in societies based on kinship relations, the term seems to refer to a request for the specification of one’s social group, which would have been primarily one’s kinship group. In Mycenaean Greece, Chadwick informs us, there appears to have been a link between *damos* with a meaning of something like the “collective voice of the district” and *demos* as meaning the plot-holders.⁵² The shift in later times, therefore, to a meaning associated with kinship group would be a shift of emphasis only, reflecting the movement of the society towards having a basis in kinship. The more abstract aspect of the meaning of *demos* is important because, whilst it also came to have the meaning of village — almost one might think an inevitability given the combination of sedentary kinship groups and its original Mycenaean meaning — its more abstract meaning shifts from kinship group to citizen (if only in a low social category) by the time of Solon (c. 594). Thus Solon writes: “To the *demos* I have given such honour as is sufficient, neither taking away nor granting them more.”⁵³

In the first place, the change of meaning implies a shift away from a kinship-based social structure. In the second place, *demos* as citizens suggests an individualisation of the social group only made possible by a shift in conceptualisation which allows another abstract overarch-

ing, unifying term to take its place. This is important because, unless a social group has the ability to perceive itself as unified, there must follow a breakdown of social organisation. Indeed this relationship might better be expressed the other way round: without a social organisation a society will not perceive itself as a unit. In fact the differing emphases in these two foregoing statements reflect different *Weltanschauungen*, which in turn reflect alternative developments in politico-legal institutions. Thus the former reflects the emphasis in modern, literate societies on objective, general constitutions coupled with an objective, enforceable set of laws both of which are administered by a governing body who perceive the politico-legal institutions as in some way protecting, or giving shape to, the state (a term not without problems itself, of course). The latter statement reflects better the situation in non-literate societies where the perception of unity is lodged within the on-going social structure or, to put it more basically, unity *is* what unified *does*. In Greece there was a movement away from this latter idea to the former. It is this movement which I consider to be closely linked to the changing perception of writing and the use to which it was put.

If *demos* came to represent the citizens, then it was *polis* which came to be used for the general unity of people. However, “in the epics the word *polis* means only a central geographical point, often a citadel.”⁵⁴ In other words, this was probably the most lasting physical representation of the spatial aspect of the meaning of *demos*. From this meaning the concept of *polis* shifted until it came to mean the area within which all people were subject to one set of politico-legal regulations. Thus by the time we get to Aristotle (c. 384-322) we find him writing: “Man is by nature an animal intended to live in a *polis*.”⁵⁵ By this time also the use of archives for storing documents had become so important that Aristotle himself regarded “the archives office as one of the indispensable institutions of his model state.”⁵⁶

However, I would not like to give the impression that the relationship between *demos* and *polis* at Athens was equivalent to that between citizens and state in modern terminology. Although the importance of written law was by this time so great that in 330 Lycurgus could write: “Come now gentleman, if anyone went into the Metroon [archives house] and erased a single law and then alleged in defence that this law meant nothing to the city, would you not have put him to death? I believe you would have been justified in doing so if you wanted to protect the other laws,”⁵⁷ nevertheless the distinction be-

tween the interests of the individual and the interest of the state was not present. Bonner makes the point, which relates to what has been noted above concerning non-literate societies, that “the modern division of suits into criminal and civil was unknown in Athens.”⁵⁸ He then states that there was a separation into private suits and public suits but that this distinction reflects only whether or not the state as a collective body was involved. Posner points out that the Metroon held a collection of documents which in the modern state would be divided into public documents and those for private use; he suggests that “in as much as the state, the *polis*, was identical with, and the sum total of, its citizens (*poltai*), many seemingly private aspects of their lives were of concern to the state.”⁵⁹ Even at this time, then, social cohesion was still maintained by the idea of an essential unity — an order — within the society, although this was becoming increasingly tenuous. Indeed it was precisely because Athenian society still perceived society as essentially unified that the works of the Sophists caused such political, as well as intellectual, unrest as is noted later.

One other aspect of the concept *polis* is important for present consideration and that is the religious development on the ground of the old physical *polis*. Starr emphasises that *polis* should not be translated as city state because, whilst originally being the focus of activity within the community, it came to represent a holy place — a place not necessary always at the urban centre: “As the Greeks began to build temples they normally located the shrine of the patron deity of their state at that site [the *polis*].”⁶⁰ These temples started to be built about the seventh century. At one level the building of the temples at this time reflects the change in social organisation from *demos* to *polis*, for the former would not have had the manpower or the skills to build the new stone temples. At a conceptual level the creation of the temples reflects a shift in the whole attitude towards religion. Instead of religion functioning within the social group, based in the family unit — in other words, an aspect of the *demos* — it now came to be based in the abstract structure of the *polis*. As a result there was created a necessity for focal religious points, places where individuals could communicate with the gods, and these came to be situated on those spots which had had special ritual meaning for the more important *demoi*.

Thus religion, which for the Greeks included the cosmic order as manifested in the behaviour of the gods, gradually came to be decontextualised from the social situation. As this occurred, so was it reconstituted in the abstracted umbrella concept within which the new

individuals organised their society. Another way of describing this transition which highlights developments in early Greek philosophy and which reached culmination in the Sophists would be to talk of the demythologising of society.

At the same time the people created points — temples — which could be used as links with the distanced cosmic order. Perhaps the best example of this process can be found in the building of the Parthenon at Athens in the late fifth century. The Parthenon, built dominating not only Athens but the Acropolis itself, was not the centre of the worship of Athena (the goddess of Athens); this worship was situated at the Erechtem as it always had been. The Parthenon was a religious monument to the glory and unity of Athens — a visible symbol of the new singlemindedness in politics and religion, which allows us to talk of the creation of an Athenian state. This type of development is by no means unique. The monasteries functioned as linking points with God in the *societas christiana* of medieval Europe⁶¹, as did the temples of ancient Egypt.⁶²

The shift in the conceptual and physical location of religion is important because the evidence suggests that in non-literate societies the religious order is conflated into the social order, and the social order is justified by teleological recourse to the cosmic (religious) order. This, indeed, would appear to have been the case in the Greece of the early period described above. Thus it is not surprising to learn that it is not until the fifth century, the time when a separation was taking place, that *nomos* is used in a political or judicial sense.⁶³ For until this time these meanings would have been subsumed within the more general meaning of *nomos*.

We can, therefore, say that the preservation of the social equilibrium discussed above is perceived as of overwhelming importance for the preservation of the society by the members of that society because the social equilibrium is perceived as the physical manifestation of cosmic harmony.⁶⁴ Should a society with this understanding of the world then alter from a position of minimal government (which is not minimal government at all but merely minimum overt government) to a monarchic government, where order is seen to be preserved by decrees from the king, then one would expect some divine overtones to accrete to kingship. This indeed occurs: in Egypt the Pharaoh was a complex god-king,⁶⁵ in Mesopotamia kingship itself was from the gods,⁶⁶ and for the Inca, Viracocha “was the supernatural analogue of the Inca Emperor.”⁶⁷ We may also note that in the *Iliad* the sceptre

which is the sign of Agamemnon's kingship is given a lineage of ownership which states that it originally belonged to Zeus.⁶⁸

Now whether or not Wittfogel is correct in seeing the development of systems of counting and writing as being linked to the needs of societies based on hydraulic agriculture,⁶⁹ given the evidence of the use to which the earliest writing was put, we must agree with Gelb when he writes: "The Sumerian writing owes its origin to the needs arising from public economy and administration."⁷⁰ This in turn occurred because the centralising of power tends to be reflected in such a centralising of the economy that a multi-focused system of reciprocal exchange becomes unified into a unicentred system of accumulation and redistribution.⁷¹ As production increases, or the system expands, memory cannot keep up, so either the society becomes self-limiting (potlatch may be an example of this) or a mnemonic system must be developed. Sumeria and Egypt made use of writing; the Incas invented the *quipu*. Thus, whilst literacy cannot be said to instigate the development of hierarchical societies it does become a potent force in their elaboration. At first this happens through the increased opportunity which writing allows for control over the economy.⁷² But later it is manifested in the use of writing to articulate laws.

In non-literate society law, as an aspect of cosmic harmony, appears integral to the functioning of the society, and arises out of it. By way of contrast in literate societies I would suggest that power, and its manifestation in law, tends to operate the other way around. Law in hierarchical societies tends to be generated by those who have power, placed in writing for remembrance and referral, and executed on to the individuals who compose the society. At this stage the whole ideology of the integration of social equilibrium and cosmic harmony is lost; the idea of justice must be redefined in social terms, and there is the development of what Bohannan has called "double institutionalisation," which allows a society to develop an overtly political concept of law. To quote Bohannan, "legal rights have their material origins (either overtly or covertly) in the customs of non-legal institutions but must be *overtly restated*⁷³ for the specific purpose of enabling the legal institutions to perform their tasks."⁷⁴ The phenomenon of double institutionalisation may be seen as the premise on which has been built the Austinian concept of law as a series of regulations to be enforced. Furthermore, it is writing which allows for the expansion of overt restatement into constitutions, law-codes, collections of precedents, and the like which make up the basis of the

idea of a modern legal system. Thus writing and the long-term, large-scale wielding of hierarchised power are intimately linked.⁷⁵ It is writing — by allowing for the objectification, classifying, and coding of law — which provides the technology for the dislocation of the society's concept of social organisation based on equilibrium from the ideology of cosmic harmony. When this separation begins, the premise or organic equilibrium tends to be replaced by an ideology based on coercion, punishment, and a pyramidal power structure.

This is what I wish to suggest occurred in Greece where the developments may be well observed through the preservation of a significant amount of the documentary evidence.⁷⁶ In Greece in general, and Athens in particular, the uncontrolled spread of writing through the population allowed for the possibility that individuals might realise the potential of script for the elaboration of critiques of, and even alternatives to, the *nomos*. This, of course, would be even more likely in a time of social upheaval — which itself presupposes some idea of alteration of the *nomos* — such as Athens experienced about the fifth century. As Burn suggests, “the [law] Codes are typically a product of an age of revolution.”⁷⁷

The generation and expansion of debate over *nomos* from the pre-Socratics onwards implies the gradual destruction of the previously taken-for-granted human and cosmic harmony. This harmony became lost in relativistic questioning of good, bad, right, and wrong, and the generation of a large number of competing ideas as to the composition of reality. Indeed these two aspects of Greek thought were so comingled that we can, with justification, talk of conflicting ideologies. The climax of this questioning of the taken-for-granted order came with those people whom we classify as Sophists and it may be suggested that it was because of the threat which they posed to the harmonious basis of the *polis* that they were disliked by many in the society.

There was one intriguing exception to this otherwise general Greek development, and that was Sparta. This is not the place to discuss Sparta other than to suggest that, unlike the other Greek states, in Sparta a high degree of control was exercised to limit those to whom literacy was made available and for what purposes writing could be used. For example, Lycurgus, that obscure Spartan law-giver, having codified a number of laws, is credited with a further decree that there should be no more written laws. Thus the oral, embracing *nomos* of Spartan society survived long enough for writers from other *poleis*, such as Xenophon, to look on its stability with envy.⁷⁸

The critical conceptual point in the changes in the structure of the *Weltanschauungen* that occurred from the sixth century onwards may, I think, be found — as Havelock finds it — in the developing importance of a concept of justice,⁷⁹ for justice becomes the metaphysical link between the human order and the cosmic order. Ehrenberg points out that, for Solon, “his *eunomia* implied the rule of *dike*, of justice.”⁸⁰ *Eunomia* here is given the meaning of good order. However, for Solon, as for earlier Greek society, the attempt to establish good order implied the re-establishment of cosmic equilibrium where the goodness is taken for granted.⁸¹ As a result *dike* is still in the background. Moreover, in spite of his position as an *archon*, a person who at this time governed in the *polis*, Solon was still perceived as *diallaktes*, a mediator. He was perceived, therefore, as one who re-established a harmony based on a concept of a fair, that is to say, an accepted, cosmically based distribution.

Eunomia, then, whilst in practice referring to the ordering of society, conflates those aspects of social interaction which the early Greeks appear to have taken for granted as being basic to social equilibrium. Versenyi states these succinctly as “proportion and right balance between man and man in possession, freedom and power. This is . . . what Solon’s legislation was intended to bring about in the service of justice — legal, political, and economic.”⁸² Here again we find ourselves referred to the link, noted above, between an economic order based on reciprocity and a social order based on the same, for here again as in the root word *nomos*, *eunomia* carries both aspects in its meaning.

Solon’s laws, the written laws promulgated to restore order to the *polis*, were described as *thesmoi*. *Thesmoi* was a term used of the judgements in earlier cases and the first thing which should be noted is that Solon’s decrees were not judgements in the old sense. Rather Solon’s judgements were a series of rules to be followed which would regularise Athenian society.

In other words, Solon used writing to articulate a series of rules disobedience to which would be judged. This form of articulation would have been all but impossible without writing because, in order to re-establish a harmonious society, Solon was creating new rules to be followed, rather than preserving a harmonious society by the practice of judgement. Thus the application of writing to legislation by Solon, and previously by Draco, changed the context of the use of the term *thesmos*.

In earlier Greek society *thesmoi* had been the manifestation in practice of *dike*. As *thesmoi* moved towards the meaning of rules, so *dike* increased in importance and its meaning altered to create a concept which we might translate as justice, in other words the correct execution of the rules laid down. Here, then, is the key to the conflict between Maine⁸³ and Diamond⁸⁴ as to the nature of *thesmoi*. At an early period in Greek history they were both religious (Maine's argument) and secular (Diamond's argument) because they represented utterances intended to keep the human and cosmic worlds in harmony. It is possible to see how the term shifted to apply to the coercive written regulations laid down by Draco and later by Solon who, nevertheless, still thought they were re-establishing a harmonious cosmos. Indeed Solon states that "*Eunomia* renders all things well-ordered and harmonious."⁸⁵

If the logic of this argument may be accepted, then we are able to give an answer to the problem raised by Ostwald⁸⁶ that *thesmoi* seems at one moment to refer to oral decrees, at another to those which are written. Concepts alter as new material situations arise. *Thesmos* carried an earlier meaning of a judgement or decree correct within the world order; this made it the most appropriate term for Solon's code of laws for, as has been noted, human and cosmic harmony were still perceived to prevail. Only later, with the breakdown of this idea, do written laws come to be termed *nomoi*, or enforced customs.

The reason for Draco's and Solon's written articulation of laws was to set out a number of precepts by which all groups, including the *demos*, could live in a state of *eunomia*. Hesiod deified *Eunomia* as the daughter of Zeus and Themis. She has been described as "one of the guardians of the social order, keeping the city from violence and lawlessness."⁸⁷ In the deification of *eunomia* we see in practice a striving to keep unified the social order and (good) cosmic order.

It is of interest to note that later writers confine *Eunomia*'s sphere of influence to individual city states. This occurs at the same time that there is a shift from the perception of law as *thesmoi* (individual judgements of a generalised *nomos*) to *nomos* as a relativised law perceived as custom and specific to individual *poleis*. It must be remembered that Athens at this time was undergoing a period of considerable unrest during which the normative order was breaking down. The abiding concern with cosmic harmony may be emphasised by noting that the *archons* appointed to govern after the demise of kingship were known as *Thesmothetai*, or Givers of Decisions, and

that their job was not merely to give judgements on cases brought before them but to govern the *polis*.⁸⁸ A change in the perception of written laws is apparent in the generations following Solon.

By the time of Cleisthenes we find written regulations being called *nomoi* and the type of society that he claimed to create by these regulations *isonomia*, which is translatable as a society based in equality — as Ehrenberg writes, “equality before the law as well as equal political rights, equal share in the state.”⁸⁹ Equality, here, in no way implies anything like social equality; rather it marks the end of any social order based on a system of reciprocity. Equality in this context implies that the written *nomoi* are applicable to everybody. The transition has passed its climax, the people of the *polis* are now all individuals subject to written *nomoi* laid down by the rulers of the *polis* and those rulers themselves are (officially) subject to them. I use officially parenthetically because now that *nomos* has to a crucial extent lost its sense of a pre-established order, the link between social order, law, and power in the form of coercion becomes paramount. At this moment *nomoi* become an example of double-institutionalisation. A movement has occurred whereby the *polis* is no longer ordered by *thesmoi*, which are enforced by *thesmothetai* to give *eunomia*. Written regulations themselves are now seen as *nomoi* to be obeyed. The purpose of the *thesmoi* had been to regulate *nomos* in the proper manner. The transference of the term *nomos* to written regulations emphasises the increasing authority of a legal system based on writing combined with an executory government and a corresponding decline in the idea of judgement as the practical expression of a harmony based on reciprocity. Simultaneously, the use of writing opened up to the Athenians the possibility of debate concerning which written *nomoi* were good *nomoi*. This problem, and the realisation of the importance of written laws for the day-to-day government of the Athenian state by the Athenians themselves, is reflected in the development of the validating mechanism of *nomosthesia*. This in turn was made possible by the appointment of *nomosthetai* sometime in the late fifth century to rationalise and elaborate the written law.⁹⁰

The uncontrolled spread of literacy in Greece meant that, as writing came into use as a medium of communication, conflicting ideas could be elaborated and preserved which, as a result, threatened the homogeneous, holistic world view. This, in turn, dispersed what Dodds, following Murray, has called the “Inherited Conglomerate.”⁹¹ This conglomerate may be understood as the complex of

embedded religious ideas and customs with which Greek oral society operated. It was replaced by a series of conflicting views of the world which in turn entailed conflicting epistemologies and conflicting ideas of how society should be governed and what laws should therefore be instituted. Writing made these organised elaborations possible. It was the realisation of the relativity of these views by that heterogenous group known as the Sophists, through their investigations concerning, among other things, the relation of *nomos* to *physis* (which had a meaning like *natural* in English), which created the break between the idea of cosmic and human harmony and the experience of government through written laws in a *polis*. It is no wonder the conservative authorities in Athens reacted against this group of disparate thinkers. As Dodds points out,⁹² the beginnings of the realisation of the relativity of ideas can be traced back to the earliest Greek philosophers and these people whom we call philosophers were also the first Greeks to realise the power of writing as a medium of communication.

What I have attempted to show is how writing aided the development of a concept of law in Greece and how this reflected a changed understanding of the idea of power. In doing this I have emphasised the aspect of the use of writing which at the beginning of this paper I called conceptual. Because of considerations of length the second aspect, that of the institutionalisation of writing, has been sadly underexamined in this paper. In spite of this I must repeat that changes in the conceptions surrounding writing and changes in the mode of institutionalisation of writing are intimately linked.

In Greece writing was perceived without any religious overtones and, as a result, its use for the preservation of order allowed for the secularisation of government, which in turn aided the development of a fracture between cosmic and human societies.⁹³ In consequence the idea of power in society had to be redefined in terms of secular authority. Furthermore the equation of harmony with the preservation of equilibrium through reciprocity was replaced by concepts of justice and punishment within *human* society.

I would like to suggest that one of the most important reasons for the rapid flowering of written Greek thought was the early lack of governmental control of literacy. As a result of this lack, the Athenian government, in spite of all its late attempts, was unable to stop the rapid development of moral and ethical debates which were directly related to the increasing secularisation of the idea of social order.

This, in turn, led to the rapid development of an idea of law based on control and therefore on exercised power.

There is, I would go on to suggest, an important relationship between the development of a concept of law as it is understood in modern societies and the different uses to which writing has been put.

In Greece, and most particularly in Athens, lack of control of writing allowed for the possibility of the elaboration of conflicting sets of ideas, thus necessitating the development of a state system based on repressive written laws created and amended by the government. This development also requires changes in attitude towards justice and towards what came to be called punishment. We might ask what changes may occur in our own society as a result of a combination of changing economic circumstances and the acceptance of new technologies as media of communication.

1 On the relation between law and social structure, vid., e.g., E. Durkheim, *The Division of Labor*, New York, 1964; K. Marx, *Capital*, III, Moscow, 1962; and later Marxist theories such as E. Pashukanis, *General Theory of Law and Marxism*, London, 1978; P. Hirst, *On Law and Ideology*, New York, 1979.

2 E. Havelock, "Preliteracy and the Pre-Socratics," *Bulletin of the Institute of Classical Studies of the University of London*, XIII, Part I, 44-67.

3 M. I. Finley, *Early Greece: The Bronze and Archaic Ages*, London, 1970, pp. 88-89.

4 R. Revere, "No Man's Coast: Ports of Trade in the Eastern Mediterranean," in K. Polanyi, ed., *Trade and Market in the Early Empires*, New York, 1957.

5 It is noted by D. Harden (*The Phoenicians*, London, 1963, p. 122) that a great library of Punic literature was known to have existed at Carthage in 146, i.e., before the sack by Rome. However, Carthage does not appear to have been typical. Here I am discussing the Eastern cities about 800 years earlier.

6 E. Posner, *Archives in the Ancient World*, Cambridge, 1972, pp. 31-36.

7 Harden, p. 79.

8 *Ibid.*, p. 102.

8a The earliest example of writing that we have from Sumeria is of a temple accounting system; vid., e.g., H. Frankfort et. al., *Before Philosophy*, Harmondsworth, 1968, chap. V., passim.

9 On this problem, vid. E. Havelock, *Preface to Plato*, London, 1963, passim.

10 Vid. A. Snodgrass, *The Dark Age of Greece*, Edinburgh, 1979.

11 Vid. J. Chadwick, *The Mycenaean World*, Cambridge, 1976, passim.

12 Finley, p. 38.

13 But see Chadwick, pp. 64-66, for a more developed view of this problem.

- 14 C. G. Starr, *The Economic and Social Growth of Greece*, Oxford, 1977, p. 30.
- 15 These wise men were called *logoi*, a term later applied to those men who wrote histories. This transition in meaning is interesting because the legislative decisions of the wise men would be based on their lived, therefore historical, understanding of the operation of their society.
- 16 L. Mair, *Primitive Government*, Harmondsworth, 1964.
- 17 Vid., e.g., M. Gluckman, *Politics, Law and Ritual in Tribal Society*, London, 1965.
- 18 Mair, p. 61.
- 19 B. A. Van Gronigen, *In the Grip of the Past*, Leiden, 1953, passim.
- 20 M. Gluckman, *The Ideas in Barotse Jurisprudence*, Manchester, 1972, p. 10.
- 21 S. Moore, "Legal Liability," in M. Gluckman, ed., *The Allocation of Responsibility*, Manchester, 1972, p. 66.
- 22 M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy*, Oxford, 1969, p. 21.
- 23 Ibid., p. 35.
- 24 G. Vlastos, "Equality and Justice in Early Greek Cosmologies," *Classical Philology*, 1947, vol. 42, p. 156.
- 25 Ostwald, p. 9.
- 26 Ibid. It should be pointed out that Ostwald goes on to say that he can see no link between *nomos* as order/behaviour and the idea of distribution.
- 27 E. A. Havelock, *The Greek Concept of Justice*, Cambridge, 1978.
- 28 Ibid., pp. 132-33.
- 29 Ibid., p. 135. A "justice" (in the *Iliad*) is something spoken aloud.
- 30 For this argument more fully developed, see *ibid.*, chap. II, "The Justice of Hesiod," passim. Havelock, *Greek Concept*, p. 217, makes the pertinent point that "when [Hesiod] personifies 'her' [Dike] as a goddess, has he not embarked on a route that will lead to the separation of justice as idea from the activity which achieves it?"
- 31 The close relationship between the individualising of society and the development and use of sanctions is brought out in M. Foucault, *Discipline and Punishment*, Harmondsworth, 1979.
- 32 In this context it is worth noting that the Sumerian law-codes for the most part talk of reparation for crimes against individuals, not punishment. Punishments such as mutilation or death were reserved for crimes against state institutions. It was only as an ideology of the state evolved in ancient Mesopotamia and individuals came to be seen as a part of the state, their protection as a responsibility of it, that punishment came to replace reparation.
- 33 But remember Malinowski's point in *Crime and Custom in Savage Society* (London, 1976) on the impossibility of distinguishing civil and criminal cases in savage societies.
- 34 In general, *vid.* Mair, chap. I.
- 35 In this point the variety of payment demanded depending on the status of the person *against* whom the transgression was committed, illustrated in the Sumerian law-codes, should be noted.

- 36 E. A. Hoebel, *The Law of Primitive Man*, Cambridge, 1954, pp. 87-89.
- 37 W. Goldschmidt, *Sebei Law*, Cambridge, 1967, p. 174.
- 38 Havelock, *Greek Concept*, p. 135.
- 39 *Ibid.*, p. 101.
- 40 W. Jaeger, *Paideia*, London, 1965, p. 103.
- 41 *Iliad*, trans. R. Lattimore, Chicago, 1951, book II, lines 204-6.
- 42 Jaeger, p. 103.
- 43 *Odyssey*, trans. E. V. Rieu, Harmondsworth, 1946, book IX.
- 44 M. Sahlins, *Stone Age Economics*, London, 1974.
- 45 Ostwald, p. 9
- 46 *Odyssey*, book IX.
- 47 It should also be noted that to the extent that the Cyclopes are human they are cannibals, for the Cyclops eats Odysseus' sailors. However, the eating of one's own kind is a characteristic which Hesiod places in the *nomos* of the beasts. Thus to the extent that the Cyclopes are human, they are not only not civilised but not human.
- 48 In this context of conceptual links between the social and the economic, it is worth citing M. Gagarin, "Dike in Archaic Greek Thought," *Classical Philology*, 69, (1974), p. 186. Gagarin suggests that Hesiod creates a concept of *dike* "legal process, law" which is based on the original judicial meaning of *dike* as a "settlement" in property disputes, and Hesiod (in *Works and Days*) pleads for an acceptance of *dike* as a necessary condition for economic prosperity.
- 49 On the similarities between Primitive Law and International Law, see M. Barkun, *Law Without Sanctions*, New Haven, 1968.
- 50 Chadwick, p. 70.
- 51 Starr, p. 30.
- 52 Chadwick, p. 77.
- 53 Quoted in V. Ehrenberg, *From Solon to Socrates*, London, 1937, p. 70.
- 54 Starr, p. 31.
- 55 *Ibid.*, p. 30. Here I use Starr's translation, which carries Aristotle's meaning better than the more usual translation "Man is a political animal."
- 56 Posner, p. 92.
- 57 *Ibid.*, quoted p. 114.
- 58 R. Bonner, *Lawyers and Litigants in Ancient Athens*; New York, 1927, p. 44.
- 59 Posner, p. 96.
- 60 *Ibid.*, p. 31.
- 61 *Vid.* R. W. Southern, *Western Society and the Church in the Middle Ages*, Harmondsworth, 1970.
- 62 H. Frankfort et al., *Before Philosophy*, Harmondsworth, 1949. p. 30.
- 63 Ostwald, p. 43.
- 64 *Vid.* M. Douglas, *Natural Symbols*, Harmondsworth, 1973, and bibliography. More particularly in the context of this paper: M. Gluckman, *Politics, Law and Ritual in Tribal Society*, London, 1965, chap. VIII, *passim*.
- 65 Frankfort, *Before Philosophy*.

- 66 H. Frankfort, *Kingship and the Gods*, Chicago, 1948.
- 67 J. Alden Mason, *The Ancient Civilizations of Peru*, Harmondsworth, 1969, p. 206.
- 68 K. Wittfogel, *Oriental Despotism*, New Haven, 1957, p. 50.
- 69 *Iliad*, book II, lines 100-108.
- 70 I. Gelb, *A Study of Writing*, Chicago, 1963, p. 62.
- 71 For a detailed examination, vid. Sahlins; also Polanyi, ed.
- 72 Vid., e.g., gs. Dow, "Minoan Literacy," *American Journal of Archeology*, pp. 108-29, on Mycenaean control of Crete through a palace-centered economy utilising Minoan Linear B.
- 73 Bohannan's italics.
- 74 P. Bohannan, "The Differing Realms of Law," in L. Nader, ed., *American Anthropologist*, 67, no. 6, part 2 (1965), p. 37.
- 75 The Ashanti kingdom has often been cited as an exception. Hoebel, p. 211, suggests that they did not have writing but I. M. Lewis in *Islam in Tropical Africa* (Oxford, 1966), points out the intimate links between Muslim traders who wrote Arabic and the Ashanti kings.
- 76 In Ostwald, p. 65.
- 77 A. R. Burn, *The Lyric Age of Greece*, London, 1967, p. 81.
- 78 Xenophon, *State of the Lacedaemonians*.
- 79 At an analogous moment in Sumerian history Hammurabi in that legal code which has come to be called the Code of Hammurabi writes of giving his people "good governance" by setting forth truth and justice throughout the land. To be found in W. M. Neill and J. Sedlar, eds., *The Ancient Near East*, Oxford, 1968, p. 141.
- 80 Ehrenberg, p. 219.
- 81 Vid. G. Vlastos "Solonian Justice," *Classical Philology*, 41 (1946), pp. 65-83.
- 82 L. Versenyi, *Man's Measure*, Albany, 1974, p. 98.
- 83 H. Maine, *Ancient Law*, London, 1906.
- 84 A. Diamond, *Primitive Law*, London, 1935.
- 85 In Ostwald, p. 65.
- 86 *Ibid.*, pp. 16-19.
- 87 Andrewes, quoted in Ostwald, p. 63.
- 88 A. R. Burn, *The Lyric Age of Greece*, London, 1967, pp. 22-25; Bonner, p. 32.
- 89 *Ibid.*, p. 96.
- 90 On this problem, vid. A. R. W. Harrison, "Law-making at Athens at the End of the Fifth Century B.C." *Journal of Hellenic Studies*, 75 (1955), pp. 26-35.
- 91 E. R. Dodds, *The Greeks and the Irrational*, Berkeley, 1951, p. 179.
- 92 *Ibid.*
- 93 It should also be noted that the unusual concatenation involving writing, religion, and society in ancient Greece had a profound effect on the economic sphere of activity. Vid. K. Polanyi, "Aristotle Discovers the Economy," in Polanyi, ed.