

THE IDEA OF EVOLUTION AND ITS IMPACT ON WESTERN POLITICAL AND LEGAL THEORY IN ANTIQUITY

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Abstract

The term ‘evolution’ is defined as a process of change and development over time, typically tending towards greater complexity (although not necessarily greater improvement) and one that is unidirectional and non-cyclical. Nevertheless, the idea of evolution as conceived throughout western history has not always comported with this definition, with evolution often being understood teleologically as destined for some clear end, be it total perfection or total destruction, depending on one’s worldview or wishes. Heraclitus’ notion of constant change or ‘flux’, although a necessary, but not sufficient, condition for the definition of evolution planted the seed of the idea of evolution in western thought. Plato, like Heraclitus, saw all social change as degeneration and decay from a past Golden Age, but, unlike Heraclitus, did not view such change as merely governed by fate, but rather capable of being controlled and ultimately arrested once the ideal state, ‘the Republic’, was realised. Apart from his Republic being a template for totalitarians attracted to distorted (often racist) ideas of evolution, Plato’s greatest influence on the

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western idea of evolution was, arguably, the desire to arrest it, primarily to recapture a privileged past, thus making him the ‘Godfather of western conservative elitism’. Like Plato’s Republic, Aristotle’s final cause doctrine has also influenced totalitarians and their teleological ideas of evolution, while the Epicureans, Stoics, and Sceptics of Ancient Greece have variously influenced social, political and legal evolutionary thought in the attitudes they espouse rather than any actual ideas (although Epicurus could be credited with one of the world’s first social evolution theories). Finally, in ancient Rome, the first real western jurisprudence emerged and apart from some prototype social contract theories, the idea of evolution was not much in evidence in this era, although of course the Roman legal system itself was in fact a striking example of an evolving legal system that has since inspired and formed the basis of western jurisprudence.

I THE MEANING OF EVOLUTION

The *Oxford Dictionary* defines evolution as:

1. gradual development esp. from a simple to a more complex form. 2. *Biol* a process by which species develop from earlier forms, as an explanation of their origins. 3. the appearance or presentation of events etc. in due succession (*the evolution of the plot*); 4. a change in the disposition of troops or ships. 5. the giving off or evolving of gas, heat, etc. 6. an opening out. 7. the unfolding of a curve. 8. *Math. dated* the extraction of a root from any given power (cf INVOLUTION).¹

¹ Bruce Moore, *Australian Concise Oxford Dictionary* (Oxford University Press, 5th ed, 2009) 486.

The *Webster WordNet Dictionary* defines evolution as:

1. a process in which something passes by degrees to a different stage (especially a more advanced or more mature stage)...
2. (biology) the sequence of events involved in the evolutionary development of a species or taxonomic group of organisms.²

The *Australian Macquarie Dictionary* evolution is:

1. any process of formation or growth; development.
2. *Biol.* the continuous genetic adaptation of organisms or species to the environment.³

Chambers Twenty First Century Dictionary defines evolution as:

1. the process of evolving.
 2. a gradual development.
 3. *biol* the cumulative changes in the characteristics of living organisms or populations of organisms from generation to generation, resulting in the development of new types of organism over long periods of time.
 4. *chem* the giving off of a gas.
- Evolutionary *adj* relating to, or as a part of, evolution. Evolutionism **noun**, *anthropol*, *biol* the theory of evolution. evolutionist *noun* a person who believes in the theory of evolution. ETYMOLOGY: 17c: from Latin *evolutio* unrolling.

It can be seen from the above definitions contained in some of the world's leading English dictionaries that the term 'evolution' has itself evolved from its 17th Century meaning, when the term first entered the English lexicon. These definitions also show that early uses of the term 'evolution' were more directed to specific contexts such as warfare (ie changes in the disposition of ships or troops) and maths (ie extraction of a root from any given power). Although initially only intended to function in a biological context, the Darwinian notion of evolution has all but colonised the

² Princeton University, *Definition of Evolution* (2003) WordNet <<http://www.webster-dictionary.org/definition/evolution>>.

³ *Macquarie Little Dictionary 2002* (MacQuarie Library, 2002) 183.

meaning of the term in public consciousness today in a number of contexts (social, political and economic as well as biological). However, it is submitted that nonetheless there is still an *essential* meaning of the term ‘evolution’ that has withstood the test of time which is not imprisoned in any specific context; namely: *ongoing change and development over time*.

Furthermore, from the above dictionary definitions, it might be cautiously concluded that a *narrative* or *history* of the thing undergoing the change is implied – that is, from one particular state at a certain point in time to another more complex or developed state at a later point in time. It should be noted, however, that it is not a necessary condition of this new state that it be superior to, or more improved than, the former state. Indeed, the essence of ‘evolution’ as a process of change and development over time is a value-free concept, and this is significant when one looks at the commonly misconceived idea that ‘evolved’ means ‘better’, ‘improved’ or ‘progress’ or is in some way ‘purposeful’ (ie what might be called the *teleological fallacy* associated with the term ‘evolution’). Moreover, it is probably reasonable to assume that evolution means something that is more or less *uni-directional* and non-cyclical, so that once something *has* evolved, there is no completely returning to its former state – and this is also significant when examining evolution as an idea in society, as will be discussed below in regards to Plato’s ideal *Republic* based on the past Dorian States of the ‘Golden Age’.

Evolution is thus conceived in this paper as a linear process, which is to say evolution is *lineal*. Evolution might be *unilineal* (as when a plant breaks the soil and grows upwards, for example) or *multilineal* (as when a plant stalk sprouts lateral shoots or branches which grow outwards in different directions). Evolution is usually considered to be in a *forward* linear direction (ie towards a more complex state) but it could also be in a *reverse*

linear direction towards a more degenerated state and thus assume the label ‘*devolution*’ – a limited case of evolution. Even though an argument could be made for a process that is *cyclical* still being, in a sense, evolution (as something might move in one linear direction and then return in the same, albeit reversed, linear direction), for the purpose of this paper, ideas that are expressed in cyclical terms are not considered to be ‘evolutionary’. This is because evolution in essence, as noted above, usually expresses the idea of irreversible or irredeemable change in the sense that the thing changed does not return to the place from whence it came (ie the core idea of cyclical thinking). Linear thinking has been the predominant mode of thought in the West. Notwithstanding eastern influences and some cyclical thinking going back as far as Pythagorean mystic notions of reincarnation discussed later in this paper, western thinking has been resolutely linear with its *grand narratives* such as the celebrated *Big Bang theory* that demands not only a beginning but also a definite end (ie cosmos ‘heat death’ brought on by entropy) and Christian eschatology with man’s first appearance and awakening in the idyllic Garden of Eden *in the beginning* (or at least shortly thereafter) and his last hurrah and mortal extinguishment in the much less inviting Armageddon in the *end of days*.

Nevertheless, whatever one considers to be the correct linguistic or essential meaning of the term ‘evolution’, it is important, when considering evolution’s role in the history of ideas, not to dismiss misconceptions surrounding the term ‘evolution’ such as the teleological fallacy noted above or the misconception of allowing evolution to be wholly colonised by Darwinism and its concomitant concepts of adaptation, blind chance and competition for survival; indeed it is these very misconceptions which have had the greatest influence on the deployment of the idea of evolution in

society and provide the most interesting cases in the study of the history of this idea in western thought.

II THE IDEA OF EVOLUTION IN ANCIENT GREECE: HERACLITUS AND PLATO

The idea of evolution makes its first appearance in western thought in Ancient Greece during the time of the pre-Socratic philosophers who speculated about the world they lived in and the nature of the substances and processes that comprised it and directed it. Of course, one of these processes was *change*.

A *Heraclitus*

Heraclitus (BC 544–483),⁴ according to Karl Popper was ‘the philosopher who discovered the idea of *change*’.⁵ Popper explains:

Down to this time, the Greek philosophers, influenced by oriental ideas, had viewed the world as a huge edifice of which the material things were the building material... They considered philosophy, or physics (the two were indistinguishable for a long time), as the investigation of ‘nature’, ie of the original material out of which this edifice, the world, had been built. As far as any *processes* were considered, they thought of either as going on within the edifice, or else as constructing or maintaining it, disturbing or restoring the stability of the balance of a structure which was considered to be fundamentally static. These were cyclic processes... This very natural approach, natural even to many of us today, was superseded by the genius of Heraclitus. The view he introduced was that there was no such edifice, no

⁴ Bernard Grun, *The Timetables of History: A Horizontal Linkage of People and Events* (Simon & Schuster/Touchstone, 3rd ed, 1991) 12.

⁵ Karl Popper, *The Open Society and Its Enemies Volume One: The Spell of Plato* (Routledge Classics, 2003) `8.

stable structure, no cosmos. ‘The cosmos, at best, is like a rubbish heap, scattered at random’ is one of his sayings. He visualised the world not as an edifice, but rather as one colossal process; not as the sum-total of all *things*, but rather as the totality of all events, or changes, or *facts*. ‘Everything is in flux and nothing is at rest’ is the motto of his philosophy.⁶

Indeed, the truly novel approach of Heraclitus’s notion of change was to break with the idea of a state of a permanent status quo, or one that is returned to after a temporary change (ie cyclical change), that had pre-occupied other pre-Socratic Greek philosophers.

Heraclitus’ notion of change was therefore uni-directional, non-cyclical, and arguably prefigured two very enduring ideas in the history of thought: first, from the 17th Century onwards, the scientific idea of entropy that is Newton’s *Second Law of Thermodynamics*, and, second, more relevant here and more proximate to Heraclitus’ time, the notion of disintegration and decay *in society*, which (when added to the moral sphere later by Platonic notions of a ‘fall’ from a Golden Age as will be discussed) was to influence later political, religious and philosophical thought not only in ancient Greece, but in the Middle Ages and even through to the present day (for example, the analogous notions of a ‘fall’ from grace in Christianity).

Heraclitus hailed from a royal family of priest kings of Ephesus in Ionia, and, while resigning his claims to royal ascendancy to his brother, he continued to support the aristocrats’ cause against the rising tide of social revolutionary (democratic) forces under Persian rule⁷. However, as Popper notes:

⁶ Ibid.

⁷ Ibid 9.

Heraclitus' fight for the ancient laws of his city was in vain, and the transitoriness of all things impressed itself strongly upon him. His theory of change give expression to this feeling: 'Everything is in flux'....'You cannot step twice into the same river'. Disillusioned, he argued against the belief that the existing social order would remain forever...⁸

Hence, Heraclitus's notion of change in the sense of degeneration and decay can be seen as a lamentation of a new social order replacing an old one from his conservative perspective. However, his notion of change (at least when considered in contexts other than a purely social one) can equally be a positive one – Heraclitus's point is simply that things do not stay the same.

Does *anything* stay the same for Heraclitus? One exception is the 'living fire':

This world, which is the same for all, no one of gods or men has made; but it was ever, is now, and ever shall be an ever –living Fire, with measures kindling and measures going out.⁹

Heraclitus's notion of everything being reducible to fire follows, in a sense, the thinking of his contemporaries, the Milesian school (Thales, Anaximander, Anaximenes) who opined that everything is made of one substance (Thales – water; Anaximenes – air; and Anaximander – one indefinable substance from which the elements earth, wind, fire and water are made).¹⁰ Unlike them, however, Heraclitus was not strictly a monist, as for him fire was not the substance from which things were made, but rather the *principle* of creation and destruction and change from one substance to

⁸ Ibid 10.

⁹ Bertrand Russell, *History of Western Philosophy* (Routledge Classics, 2004) 50.

¹⁰ Ibid 33–8.

another (whatever that substance happened to be). Also, as noted above, Heraclitus did not have the tendency to understand things as ultimately returning to their former state as did his pre-Socratic contemporaries – he was truly a *linear* thinker.

Moreover, Bertrand Russell suggests that the permanence of the principle of Heraclitus's fire makes it a *process* rather than a substance, and although Russell cautions this view should not be attributed to Heraclitus himself,¹¹ it is submitted this is perhaps the correct way to view Heraclitus's notion of change – that is, an ever-changing *process*, the only constant being that of change itself.

Returning to the definition of evolution above, Heraclitus' notion of change appears to capture the essence of 'evolution' as change over time but not always change *and development*, at least insofar as it alludes primarily to degenerative change (so at best, it might be only a limited case of evolution, 'devolution'). However, Heraclitus was not only concerned with destructive forces, but also creative forces (ie *all* change), and if according to him things are constantly in flux, a destroyed thing will develop into something else after being subjected to the 'ever living Fire' (indeed, it is a truism that many things are created after something else is first destroyed – omelettes from broken eggs to use a well-worn example). In terms of evolution, however, creation-through-destruction is again, at best, only a limited case of evolution as the process of development certainly continues long *after* the initial cataclysmic destructive events have kick-started this process and no obvious destructive forces continue to be at work.

Thus, Heraclitus' notion of constant change would appear to be a necessary, but not sufficient, condition for the idea of evolution.

¹¹ Ibid 53.

B *Plato*

Heraclitus' view, noted above, that the society in which he lived was undergoing a process of degeneration and decay, was a view shared by many of his aristocratic contemporaries and near-contemporaries, perhaps most notably Plato (BC 427–347).¹²

Karl Popper paints the following picture of the young Plato:

Plato lived in a period of wars and of political strife which was, for all we know, even more unsettled than that which had troubled Heraclitus. While he grew up, the breakdown of tribal life of the Greeks led in Athens, his native city, to a period of tyranny, and later to the establishment of a democracy which tried jealously to guard itself against any attempts to reintroduce either a tyranny or an oligarchy, ie a rule of the leading aristocratic families. During his youth, democratic Athens was involved in a deadly war against Sparta, the leading city state of the Peloponese, which had preserved many of the laws and customs of the ancient tribal aristocracy... Plato was born during the war and he was about twenty-four when it ended. It brought terrible epidemics, and in its last year, famine, the fall of the city of Athens, civil war, and a rule of terror, usually called the rule of the Thirty Tyrants; these were led by two of Plato's uncles, who both lost their lives in the unsuccessful attempt to uphold their regime against the democrats'.¹³

While Plato's celebrated *Theory of Forms and Ideas*, effectively a theory of unchanging universals, is the ideological polar opposite of Heraclitus' notion of constant change, the two men did share a similar social heritage that led each of them to have a deeply pessimistic view of the societies in which they lived and where those societies were headed, compared to, what

¹² Grun, above n 5, 12.

¹³ Popper, above n 6, 15–16.

appeared to both men, a far more superior past. This pessimism led Plato to be of the view, as Heraclitus had been, that constant change was indeed a fact of life, particularly *social* life. As Popper explains:

From the feeling that society, and indeed ‘everything’ was in flux, arose ... the fundamental impulse of his philosophy as well as the philosophy of Heraclitus; and Plato summed up this social experience, exactly as his historicist predecessor had done, by proffering a law of historical development. According to this law... *all social change is corruption or decay or degeneration*. This ... forms, in Plato’s view, part of a cosmic law – of a law which holds for created or generated things. All things in flux, all generated things, are destined to decay. Plato, like Heraclitus, felt that the forces which are work in history are cosmic forces.¹⁴

However, the pessimistic attitude towards change in both Heraclitus’ and Plato’s worldviews is only half of the story. Both men also saw a potentially positive aspect of change in the societies in which they lived, albeit in very different ways.

Popper describes Heraclitus’ more ‘positive’ vision of change in the following terms:

But having reduced all things to flames, to processes, like combustion, Heraclitus discerns in the processes a law, a measure, a reason, a wisdom; and having destroyed the cosmos as an edifice, and declared it to be a rubbish heap, he reintroduces it as the destined order of events in the world process.

Every process in the world, and especially fire itself, develops according to a definite law, its ‘measure’. It is an inexorable and irresistible law, and to this extent it resembles our modern conception of natural law as well as the conception of historical or evolutionary laws of modern historicists. But it

¹⁴ Ibid 16–17.

differs from these conceptions in so far as it is the decree of reason, enforced by punishment, just as is the law imposed by the state. The failure to distinguish between legal laws or norms on the one hand and natural law or regularities on the other is characteristic of tribal tabooism; both kinds of law alike are treated as magical, which makes a rational criticism of the man-made taboos as inconceivable as an attempt to improve upon the natural world: ‘All events proceed with the necessity of fate....The sun will not outstep the measure of his path; or else the goddesses of fate, the handmaids of Justice, will know how to find him’. But the sun does not only obey the law; the Fire, in the shape of the sun and ... of Zeus’ thunderbolt, watches over the law; and gives judgement according to it.¹⁵

One can see in this, from a political perspective, something much more insidious than a mere sigh of resignation toward the changing nature of things. After avoiding any teleological fallacy with his notion of entropy-like destruction in his conception of the cosmos, Heraclitus then appears to succumb to this fallacy, in his conception of society, by recruiting these very same cosmic forces in ensuring that *justice* will somehow prevail. But justice in favour of whom? Popper discusses Heraclitus’s apparent relativism in his theory of opposites¹⁶ and his celebrated aphorisms such as ‘the path that leads up and the path that leads down are identical’ and ‘the straight path and the crooked path are one and the same’ which one would think would answer this question in the negative, but notes all the same that this relativist position:

... does not prevent Heraclitus from developing upon the background of his theory of the justice of war and the verdict of history a tribalist and romantic ethic of Fame, Fate and the superiority of the Great Man, all strangely

¹⁵ Ibid 11.

¹⁶ The theory that opposites combine to produce a motion which is in harmony or a unity arising out of diversity – Heraclitus used the example of attunement of opposite tensions in the bow and the lyre – see Russell, above n 10, 51.

similar to some very modern ideas: ‘Who falls fighting will be glorified by gods and by men...The greater the fall the more glorious the fate...The best seek one thing above all others, eternal fame... One man is worth more than ten thousand if he is Great’.¹⁷

As to *Plato’s* view on the ‘positive’ aspects of change, Popper notes some similarities with Heraclitus’s position, but observes:

Whether or not he (Plato) also believed that this tendency (to depravity) must *necessarily* come to an end once the point of extreme depravity has been reached seems to me uncertain. But he certainly believed that it is *possible* for us, by a human rather than a superhuman effort, to break through the fatal historical trend, and to put an end to the process of decay.

Great as the similarities are between Plato and Heraclitus, we have struck here an important difference. Plato believed that the law of historical destiny, the law of decay, can be broken by the moral will of man, supported by the power of human reason....

Plato believed that the law of degeneration involved moral degeneration. Political degeneration at any rate depends on his view mainly upon moral degeneration (and lack of knowledge; and moral degeneration, in its turn, is due mainly to racial degeneration. This is the way the general cosmic law of decay manifests itself in the field of human affairs.

.... Plato may well have believed, just as the general law of decay may have manifested itself in moral decay leading to political decay, the advent of the cosmic turning-point would manifest itself in the coming of a great law-giver whose powers of reasoning and whose moral will are capable of bringing this period of political decay to a close. It seems likely that the prophesy, in the *Statesman*, of the return of the Golden Age, of a new millennium, is the expression of such a belief in the form of a myth ... The state which is free from

¹⁷ Popper, above n 6, 13–14.

evil of change and corruption is the best, the perfect state. It is the state of the Golden Age which knew no change. It is the *arrested state*.¹⁸

Popper shows how this political view of the arrested state links to Plato's more celebrated idea of the *Theory of Forms and Ideas*:

According to the *Republic*, the original or primitive form of society, and at the same time, the one that resembles the Form or Idea of a State most closely, the 'best state', is a kingship of the wisest and most godlike men.¹⁹

Plato's thinking, on the surface, therefore appears to capture both essential elements of change and development referred to in the definition of evolution above – *change* which is acknowledged by both Heraclitus and himself as a fact of life and *development* due to the possibility of positive change due to morally and politically directed forms action which Plato considers possible but Heraclitus seems content to leave mostly to Fate. However, Plato's plan of consciously taking society effectively backwards to its past glorious state and arresting it at that point is hardly a process of *ongoing* change and development in the evolution sense, and is actually inimical to the idea of evolution. Further, the positing of a specific utopian society in the manner of the *Republic* renders Plato's type of thinking explicitly *normative* compared to Heraclitus's supposedly *relativistic* thinking referred to above.

Summing up, in embracing change as a fact of life, albeit reluctantly since it affected their privileged positions in society, two of the most influential thinkers in Ancient Greece, Heraclitus and Plato, both sought to rationalise the concept of change in historicist terms. Heraclitus is best remembered most for noting constant change as a fact of life, explaining it in

¹⁸ Ibid 17–18.

¹⁹ Ibid 40.

metaphysical terms, and for well-known aphorisms such as ‘you never step in the same river twice’ noted earlier, but a closer examination of his attitude towards change and whom it may (or may not) favour is far from benign resignation or relativism – his was a yearning for a something that resembled his privileged past that perhaps Fate would deliver, at least to the strong and war-like, and those (in Heraclitus’ mind) who justly deserved it. If Heraclitus’s thinking does not map neatly onto the idea of evolution as previously defined in this paper, it does at least introduce the notion of a process of constant change which is a necessary, if not sufficient, condition for this idea. Also, Heraclitus does share a certain purportedly relativistic (yet still ideological) disposition common to subsequent totalitarian thinkers who have expressly used the idea of evolution to advance their worldviews. Whether Heraclitus can be said to have influenced these thinkers is a moot point, but he did influence Plato,²⁰ and the latter’s influence on subsequent thinkers who have expressly adopted the idea of evolution is well settled.

Less passively and mystically than Heraclitus, Plato’s historicism relies on a degenerated society being restored to something approaching past glory. This is not done by leaving things to *Fate* or *Destiny* and adopting a manly disposition in the hopes of being favoured thereby (as Heraclitus would), but rather (in the manner of the *Republic*), by using politically and morally directed forms action to arrest the devolution of society on the path of degeneration and decay and, once built, to arrest any further evolution of the reformed ideal state, since it would only again fall into degeneration and decay. While Plato’s belief that the future course of a society can be guided by action, his program is primarily one to restore it to its supposedly

²⁰ Russell, above n 10, 109. Bertrand Russell notes the philosophical influences on Plato were Pythagoras, Parmenides, Heraclitus and Socrates.

former ideal self. The concept that any further development should be arrested in the belief that some sort of ideal status quo can be maintained suggests that, while Plato shared Heraclitus' views on change as a process, and degeneration and decay in particular as they relate to society (both limited cases of evolution – devolution), Plato's desire to arrest the course of evolution runs counter to the very essence of 'evolution' (whose underlying premises is *ongoing* change and development- the notion of 'arrested development' can never be a valid postulate of the idea of evolution).

Thus, while the constant-change aspect of the idea of evolution has been bequeathed to us by Heraclitus, we can thank Plato for the idea that change and even evolution itself might be arrested and even reversed. Although this may seem a preposterous idea and not physically possible (which of course, it isn't), it has been an idea entertained often throughout history since Plato, namely by that phenomenon in society which could call itself the arch-rival of the idea of evolution in the sense of changing the existing status quo: *conservative elitism*. Plato is arguably the 'Godfather' of western conservative elitism and with that appellation one would expect his influence on the use of the idea of evolution in political, legal and social theory to be profoundly negative. Nevertheless, as mentioned earlier, he was also influential in a *positive* way on subsequent totalitarian thinkers who have deployed the idea of evolution to advance their worldviews in explicit fashion. While this seems to be a paradox, it really isn't, particularly when one considers that the propensity of conservative elitists and totalitarians (of whatever background) is to use their theories as a means of gaining power or *control*. The idea of evolution is of course very differently deployed by these two groups – conservatives, in the negative sense, by attempting to turn back the clock and arrest development or

‘progress’, or at least development or progress which they do not like nor have any control over; and totalitarians, in the positive sense, attempting to take society in some new direction in line with what their economic, racial, religious or cultural beliefs or preferences dictate it ought to be (often to a more privileged future than their unprivileged pasts – indeed, two of the greatest modern dictators, Hitler and Stalin, came from profoundly unprivileged backgrounds compared to their future positions in the regimes they subsequently helped to build).²¹

III THE IDEA OF EVOLUTION IN ANCIENT GREECE: ARISTOTLE

Plato’s famous pupil Aristotle (BC 384–322)²² did not embrace his teacher’s *Theory of Forms and Ideas* so did not regard all sensible things as imperfect copies of their ideal original selves. Thus, on the concept of change, he did not share Plato’s view that there is a degeneration or decay from a thing’s perfect past (where it inhabited the ideal realm) to its far from perfect present (in which it is an imperfect copy of its former glorious self).

Aristotle did indeed have his own ideas on evolution; however, partly due to his rejection of Plato’s Theory of Forms and Ideas, it was effectively an inversion of Plato’s theory of change so that sensible things tend *towards* perfection rather than retreat from it. This is apparent in Aristotle’s *Final Causes* doctrine, as Karl Popper explains:

Aristotle insists, of course, that unlike Plato he does not conceive the Forms or Ideas as existing apart from sensible things. But in so far as this difference is important, it is closely connected with the adjustment in the

²¹ Allan Bullock, *Hitler and Stalin: Parallel Lives* (Fontana Press, 1991).

²² Grun, above n 5, 14.

theory of change. For one of the main points in Plato's theory is that he must consider the Forms or essences or originals (or fathers) as existing prior to, and therefore apart from, sensible things, since these move further and further away from them. Aristotle makes sensible things move towards their final causes or ends, and these he identifies with their Forms and essences.²³

Prolific as his output was to the history of ideas generally, Aristotle did not seem, unlike his master Plato, to have a historicist bent. Significantly, he did not apply his doctrine of Final Causes to the evolution of society; but this is not to say that others have not done so. As Popper explains, after noting that Aristotle 'who was a historian of the more encyclopaedic type, made no direct contribution to historicism'²⁴ and that he did not seem 'to have interested himself in the problem of historical trends'²⁵ that:

In spite of this fact ... his theory of change [final cause doctrine] lends itself to historicist interpretations, and that it contains the elements needed for elaborating a grandiose historicist philosophy.²⁶

Thus, it can be argued that Aristotle's final cause doctrine has had a pernicious, even if only mainly unconscious, influence on evolutionary ideas in western political, social and legal thought by imbuing them with their promoters' (often malign) *purposes*.

²³ Karl Popper, *The Open Society and Its Enemies Volume Two: The High Tide of Prophecy, Hegel, Marx and the Aftermath* (Routledge Classics, 2011) vol 2, 223.

²⁴ Ibid 224.

²⁵ Ibid.

²⁶ Ibid.

IV OTHER EVOLUTIONARY THINKERS IN ANCIENT GREECE

Before moving on from Ancient Greek thought, it is worth briefly mentioning some other prominent identities and schools of that era. It is submitted that while these thinkers' ideas have had much less impact on political, social or legal evolutionary thought than the thinkers already discussed, firstly, their prominence in history demands that they be accounted for in the type of survey undertaken in this paper, and secondly, their ideas may in some measure have helped shape the ideas of the thinkers already discussed, or later thinkers influenced by the idea of evolution, in subtle and indirect ways.

After the Milesian school, which has already been mentioned, the most significant early Greek philosopher and a contemporary of that school was Pythagoras.

Pythagoras (BC 581–497)²⁷ spoke of change in a cyclical sense, but it was mainly informed by his celebrated mysticism including his teachings that 'first, the soul is an immortal thing, and that it is transformed into other kinds of living things; further, that whatever comes into existence is born again in the revolutions of a certain cycle, nothing being absolutely new'.²⁸ Although much of Pythagorean thought has echoed down through the millennia (not least his mathematical theories), it has had little impact on the idea of evolution in Western social, political or legal thought. There is also the fact already mentioned that this paper is not concerned with cyclical processes but lineal processes insofar as the idea of evolution is concerned.

²⁷ Grun, above n 5, 10.

²⁸ Russell, above n 10, 41 quoting Dikaiarchos.

Parmenides was a contemporary of Heraclitus, albeit some 30 years younger than the latter.²⁹ His theory of change was proposed as the antithesis of Heraclitus' theory of change; rather than the Heraclitian notion of everything being in a constant state of flux, according to Parmenides, *nothing* changes. Citing key passages in his poem *Nature* where Parmenides famously set out his dual doctrines *the way of opinion* and *the way of truth*, Russell explains with respect to the latter doctrine (since this is the doctrine relevant to Parmenides' theory of change) that:

What he says about the way of truth, so far as it has survived, is, in its essential points as follows:

'Thou canst not know what is not – that is impossible – nor utter it; for it is the same thing that can be thought and that can be.'

'How, then can what **is** be going to be in the future? Or how could it come into being? If it came into being, it is not; nor is it if it is going to be in the future. Thus is **becoming** extinguished and **passing away** not to be heard of.

'The thing that can be thought and that for the sake of which the thought exists is the same; for you cannot find thought without something that is, as to which it is uttered'

The essence of the argument is: When you think, you think of something; when you use a name, it must be the name of something. Therefore both thought and language require objects outside themselves. And since you can think of a thing or speak of it at one time as well as another, whatever can be thought of or spoken of must exist at all times. Consequently there can be no change, since change consists in things coming into being or ceasing to be.³⁰

²⁹ Parmenides was born BC 515: Grun, above n 5, 10.

³⁰ Russell, above n 10, 56.

Russell pays Parmenides' argument the generous compliment of being 'the first example in philosophy of an argument from thought and language to the world at large'³¹ and notes that 'what makes Parmenides historically important is that he invented a form of metaphysical argument that, in one form or another, is to be found in most subsequent metaphysicians down to and including Hegel'.³² Parmenides' theory of change, celebrated as it is in the realm of metaphysical thought, could hardly be said to have any *direct* impact on the idea of evolution as applied to much more down-to-earth realm of social, political or legal thought. However, Parmenides' theory could be said to have had an *indirect* impact on later thinkers who have had a significant impact on this realm (perhaps most notably Hegel, as Russell observes in the above passage).

Empedocles (BC 490–430)³³ also developed a metaphysical notion of change. Like Heraclitus, he believed strife was the agent of change, but unlike Heraclitus, he did not believe strife was the only agent of change, and believed there were effectively two agents at work: *love* and *strife*.³⁴ The fact that these forces effectively see-saw over time with the world being dominated by one or the other in an endless cycle is an attempt to explain motion in terms of the arguments of his older contemporary Parmenides, but he was not in agreement with Parmenides about an *unchanging* universe.³⁵ Empedocles also saw these agents of change being ruled by *chance and necessity* rather than purpose.³⁶ Empedocles is

³¹ Ibid.

³² Ibid 55.

³³ Grun, above n 5, 10.

³⁴ Russell, above n 10, 62.

³⁵ Ibid.

³⁶ Ibid.

primarily remembered for being a scientist (arguably, the West's *first* scientist, if not the West's first eccentric scientist).³⁷ His contribution to evolution as an idea is limited to the realm of metaphysics, although his metaphysical arguments have not had anywhere near the impact on western philosophy as Parmenides' celebrated change paradox mentioned above. On the other hand, Empedocles' account of biological evolution, could earn him the appellation of *proto-Darwinist*, even if not quite *proto-social Darwinist*, given his colorful account, involving, among other things, solitary limbs, eyes and other body parts joining together to form human bodies in prehistoric times.³⁸

V THE IDEA OF EVOLUTION IN HELLENIC AND HELLENISTIC GREECE

The three main schools of philosophical thought that have been identified in Hellenic and Hellenistic Greece are: Epicureanism, Stoicism, and Scepticism.³⁹ Apart from Epicureanism, there were no explicit ideas of evolution espoused in these schools (and perhaps not even by the Epicureans as will be discussed), but the main influence of these schools of thought comes from their openness to (in the case of Epicureanism), ambivalence towards (in the case of Stoicism), and indifference towards (in the case of scepticism) the use of the idea of evolution in subsequent

³⁷ Ibid 60. Bertrand Russell notes 'Legend had much to say about Empedocles. He was supposed to have worked miracles, or what seemed such, sometimes by magic, sometimes by means of scientific knowledge. He could control the winds, we are told; he restored life to a woman who seemed dead for thirty days; finally, it is said, he died leaping into the crater of Etna to prove he was a god'.

³⁸ Ibid 61.

³⁹ Ibid 211. Bertrand Russell notes that the philosophy in this age 'includes the foundation of the Epicurean and Stoic schools, and also of scepticism as a definitely formulated doctrine'.

periods of history and the modern world. Thus, these schools of thought are mainly influential on the idea of evolution in western political, social and legal thought in the attitudes they generate towards such an idea, rather than engaging with the actual content of the idea.

A Epicureanism

Epicurus' (BC 340–271)⁴⁰ concept of change was, like Parmenides, that of an eternal unchanging realm comprised of an eternal substance, but refuting Parmenides' monism, and following the atomist Democritus (born 460),⁴¹ Epicurus posited this eternal substance was comprised of unchanging atom-like particles (so that the forms they comprised change but not the atoms themselves) in a void.⁴² Epicurus embraced scientific notions, according to Russell, mainly due to his stance against superstition and its erstwhile perceived agency on human affairs. Although believing in their existence, Epicurus believed that the gods 'did not trouble themselves with the affairs of our human world'.⁴³ Epicureanism has never really been synonymous with any *original* scientific insights, as Russell notes:

...the Epicureans contributed practically nothing to natural knowledge. They served a useful purpose by their protest against the increasing devotion of the later pagans to magic, astrology, and divination....⁴⁴

Epicureanism's impact on intellectual thought is arguably as precursor to the *humanism* movement of the Renaissance. The Epicurean movement

⁴⁰ Grun, above n 5, 16.

⁴¹ Ibid 12.

⁴² Russell, above n 10, 235.

⁴³ Ibid 239.

⁴⁴ Ibid 236.

qua humanism prototype and its notion of hedonism as pleasure being the only intrinsic good was nothing short of heresy to religion dominated medieval thinking. If one considers the idea of evolution in the form that it was expressly articulated from the time of Darwin onwards as a continuation of the Enlightenment project commenced a century or so before, Epicureanism as an *attitude* (if not a systematic thought discipline) can be seen as a significant *support* for the idea of evolution, even if not an intellectual influence.

However, one probably should not leave off on a discussion of the Epicureans' role in shaping the idea of evolution in the ancient world without looking to the work of Lucretius (BC 98–55),⁴⁵ who Russell notes was the ancient world's most eminent follower of Epicurus⁴⁶ and in his celebrated *The Nature of Things* sets out Epicurean philosophy.⁴⁷ Relevantly, a social theory of evolution and how civilization evolved, is set out in Lucretius' poem. While this theory did not directly or even indirectly influence later social and political thought in the way Epicureanism influenced humanism did from the time of the Renaissance, Epicurean social theory of civilisation as set out in Lucretius' poem is arguably the most explicit and thoroughgoing account of the evolution of society up to that time.

Lucretius' poem comprises six books. The following extracts are from Books V and VI:⁴⁸

⁴⁵ Grun, above n 5, 22.

⁴⁶ Russell, above n 10, 236.

⁴⁷ Ibid 237.

⁴⁸ Lucretius, *On the Nature of Things* (circa 50 BCE, translated by William Ellery Leonard) <http://classics.mit.edu/Carus/nature_things.5.v.html>.

Beginnings of Civilization

Afterwards,
When huts they had procured and pelts and fire,
And when the woman, joined unto the man,
Withdrew with him into one dwelling place,
Were known; and when they saw an offspring born
From out themselves, then first the human race
Began to soften. For 'twas now that fire
Rendered their shivering frames less staunch to bear,
Under the canopy of the sky, the cold;
And Love reduced their shaggy hardiness;
And children, with the prattle and the kiss,
Soon broke the parents' haughty temper down.
Then, too, did neighbours 'gin to league as friends,
Eager to wrong no more or suffer wrong,
And urged for children and the womankind
Mercy, of fathers, whilst with cries and gestures
They stammered hints how meet it was that all
Should have compassion on the weak. And still,
Though concord not in every wise could then
Begotten be, a good, a goodly part
Kept faith inviolate- or else mankind
Long since had been unutterably cut off,
And propagation never could have brought
The species down the ages.
Lest, perchance,
Concerning these affairs thou ponderest
In silent meditation, let me say
'Twas lightning brought primevally to earth
The fire for mortals, and from thence hath spread
O'er all the lands the flames of heat. For thus
Even now we see so many objects, touched
By the celestial flames, to flash aglow,
When thunderbolt has dowered them with heat.
Yet also when a many-branched tree,

Beaten by winds, writhes swaying to and fro,
Pressing 'gainst branches of a neighbour tree,
There by the power of mighty rub and rub
Is fire engendered; and at times out-flares
The scorching heat of flame, when boughs do chafe
Against the trunks. And of these causes, either
May well have given to mortal men the fire.
Next, food to cook and soften in the flame
The sun instructed, since so oft they saw
How objects mellowed, when subdued by warmth
And by the raining blows of fiery beams,
Through all the fields.
And more and more each day

Would men more strong in sense, more wise in heart,
 Teach them to change their earlier mode and life
 By fire and new devices. Kings began
 Cities to found and citadels to set,
 As strongholds and asylums for themselves,
 And flocks and fields to portion for each man
 After the beauty, strength, and sense of each-
 For beauty then imported much, and strength
 Had its own rights supreme.

As these magisterial passages suggest, the emergence of humankind from isolation, the fruits of co-operative behaviour and the harnessing of fire and agriculture had obviously brought benefits to the human race. However, matters would now arise that challenged this idyllic initial condition, as humans were not content with this alone but sought greater advantage than their neighbours leading to the formation of elites and underlings:

Thereafter, wealth
 Discovered was, and gold was brought to light,
 Which soon of honour stripped both strong and fair;
 For men, however beautiful in form
 Or valorous, will follow in the main
 The rich man's party. Yet were man to steer
 His life by sounder reasoning, he'd own
 Abounding riches, if with mind content
 He lived by thrift; for never, as I guess,
 Is there a lack of little in the world.
 But men wished glory for themselves and power
 Even that their fortunes on foundations firm
 Might rest forever, and that they themselves,
 The opulent, might pass a quiet life-
 In vain, in vain; since, in the strife to climb
 On to the heights of honour, men do make
 Their pathway terrible; and even when once
 They reach them, envy like the thunderbolt
 At times will smite, O hurling headlong down
 To murkiest Tartarus, in scorn; for, lo,
 All summits, all regions loftier than the rest,
 Smoke, blasted as by envy's thunderbolts;
 So better far in quiet to obey,
 Than to desire chief mastery of affairs
 And ownership of empires. Be it so;
 And let the weary sweat their life-blood out
 All to no end, battling in hate along
 The narrow path of man's ambition
 Since all their wisdom is from others' lips,

And all they seek is known from what they've heard
And less from what they've thought.

However, Epicurus (or Lucretius) is not against elitism *per se*. In the following stanza, Lucretius, in tones not unlike the lamentations of Heraclitus and Plato on the fall of society to democracy ('decay' in their minds), writes:

Nor is this folly
Greater to-day, nor greater soon to be,
Than' twas of old.
And therefore kings were slain,
And pristine majesty of golden thrones
And haughty sceptres lay o'erturned in dust;
And crowns, so splendid on the sovereign heads,
Soon bloody under the proletarian feet,
Groaned for their glories gone- for erst o'er-much
Dreaded, thereafter with more greedy zest
Trampled beneath the rabble heel. Thus things
Down to the vilest lees of brawling mobs
Succumbed, whilst each man sought unto himself
Dominion and supremacy.

Unlike Plato, however, the prescription in this poem to this state of social decay, is not to restore society to a past Golden Age in the style of a utopian style *Republic*, but in a manner that is a prototype of the contractarian model articulated in various forms many centuries later by Hobbes, Rosseau and Locke, Lucretius writes:

So next
Some wiser heads instructed men to found
The magisterial office, and did frame
Codes that they might consent to follow laws.
For humankind, o'er wearied with a life
Fostered by force, was ailing from its feuds;
And so the sooner of its own free will
Yielded to laws and strictest codes. For since
Each hand made ready in its wrath to take
A vengeance fiercer than by man's fair laws
Is now conceded, men on this account
Loathed the old life fostered by force. 'Tis thence
That fear of punishments defiles each prize
Of wicked days; for force and fraud ensnare
Each man around, and in the main recoil

On him from whence they sprung. Not easy 'tis
For one who violates by ugly deeds
The bonds of common peace to pass a life
Composed and tranquil. For albeit he 'scape
The race of gods and men, he yet must dread
'Twill not be hid forever- since, indeed,
So many, oft babbling on amid their dreams
Or raving in sickness, have betrayed themselves
(As stories tell) and published at last
Old secrets and the sins.

What is significant about this account of the beginnings of civilization up to the point of its embrace of the rule of law is that it is arguably one of the earliest social contract theories and accounts of the emergence of the rule of law out of the evolution of society in western thought.

This account was to influence further ideas of social contract theory in Ancient Rome as will be discussed later in this paper.

B *Stoicism*

The Stoics⁴⁹ were not concerned with historicism and there is no record of a Stoic social theory of evolution. The stoics were pragmatic, dealing with the issues of the day and of course are known for their celebrated aestheticism and studied moderation and temperance (hence the term 'stoic' being part of the English lexicon). Although it is nigh on impossible to point to stoicism as having any direct impact on *evolutionary* social, political or legal thought (although its direct impact on many other aspects on western thought is undeniable), stoicism has had an *indirect* impact on other schools of thought that have influenced or embraced the idea of evolution in western thought; this being either negatively, in its role in supporting religious views antithetical to the idea of evolution in the

⁴⁹ Stoicism is thought to be founded by Zeno in the early part of the 3rd century BC: Russell, above n 10, 241.

Middle Ages with the predominance of a Christian worldview and its account of a created eternal universe, or positively, in complementing the stoic personalities of totalitarians who eagerly adopted their own versions of the idea of evolution to build their various regimes. Moreover, stoicism, like Epicureanism, is more an *attitude* than a sophisticated system of thought; but nonetheless an attitude that has resonated through the centuries to influence other more systematic intellectual schools of thought. Whereas the influence of Epicureanism on intellectual thought was to come to prominence during the Renaissance (and arguably positively influenced or supported ideas about evolution, including Darwin's, which soon followed), Stoicism's influence on intellectual thought was most prominent on intellectual thought from the beginning of the Middle Ages up to the Renaissance – and certainly during most of the devoutly Christian period that defined that era.

However, Stoicism resurfaced in modern times as a political force appealing to a certain mindset; as Russell explains:

Stoicism, unlike the earlier purely Greek philosophies, is emotionally narrow, and in a certain sense fanatical; but it also contains religious elements of which the world felt the need, and which the Greeks seemed unable to supply. In particular, it appealed to rulers....⁵⁰

And:

The course of nature, in Stoicism as in eighteenth-century theology, was ordained by a Lawgiver who was also a beneficent Providence. Down to the smallest detail, the whole was designed to secure certain ends by natural means. These ends, except in so far as they concern gods and daemons, are

⁵⁰ Ibid 241.

to be found in the life of man. Everything has a purpose connected with human beings.⁵¹

Russell also notes that Stoic virtue ‘consists in a will which is in agreement with Nature’⁵² and points out the logical conundrum that natural laws determining virtue presents: ‘If I am wicked, Nature compels me to be wicked’⁵³.

It is probably then with some justification that Russell says of the Stoics:

The Stoic is not virtuous in order to do good, but does good in order to be virtuous. It has not occurred to him to love his neighbour as himself; love, except in a superficial sense, is absent from his conception of virtue.⁵⁴

The ‘Stoic stance’ is one that will be returned to later in this paper with respect to its influence on Roman thought.

C *Scepticism and Cynicism*

Systematic Western Scepticism as a school of thought dates back to Pyrrho⁵⁵ in opposition to dogmatic assertions of the Stoics. Scepticism *per se* arguably began even earlier with the pre-socratic philosopher and poet Xenophanes’⁵⁶ critique of the Greek pantheon of Gods, or with Socrates’ mode of questioning all facts and assumptions and his celebrated claim of only knowing that he knew nothing; however, the Pyrrhonian school was

⁵¹ Ibid 243.

⁵² Ibid 244.

⁵³ Ibid 244.

⁵⁴ Ibid.

⁵⁵ Russell, above n 10, 224.

⁵⁶ Grun, above n 5, 10.

the first to systematise doubt, as Rene Descarte and the phenomenologists were to do many centuries later. The same could be said for cynicism, a school derived from Socrates' pupil Antisthenes through its founder Diogenes⁵⁷ whose main contribution to western philosophy has been to challenge rather than construct intellectual edifices (including evolutionary dogma).

VI THE IDEA OF EVOLUTION IN ANCIENT ROME

Rome's ascendancy began in the first and second Punic Wars (BC 264–241 and BC 218–201) in which Rome defeated the then dominant powers in the western Mediterranean, Syracuse and Carthage, followed by the conquest of Macedonian monarchies in the second century BC, Spain (in the course of Rome's war with Hannibal) and France in the middle of the first century BC, and finally England about a hundred years later, so that the Empire's frontiers, at its height, were the Rhine and Danube in Europe, the Euphrates in Asia, and the desert in North Africa.⁵⁸

However, for all that, Russell notes that 'The only things in which the Romans were superior (to the Greeks) were military tactics and social cohesion'⁵⁹ and opines that 'To the end, Rome was culturally parasitic on Greece. The Romans invented no art forms, constructed no original system of philosophy, and made no scientific discoveries. They made good roads, systematic legal codes, and efficient armies; for the rest they looked to Greece'.⁶⁰ While this seems a harsh assessment, it is probably fair to say

⁵⁷ Russell, above n 10, 221.

⁵⁸ Ibid 257.

⁵⁹ Ibid 263.

⁶⁰ Ibid.

the Romans' main philosophical influences were those to do with stoic virtue rather than the more abstract philosophical notions of Ancient Greece, let alone ideas to do with evolution (although as will be discussed towards the end of this paper there were, like the Epicurean conception of social evolution, Roman social evolution theories by Cicero and Seneca). Yet, as will be seen, Roman stoic virtue as nurtured in modern times has been an infamous albeit paradoxical support to the pernicious type of ideas of evolution that characterised the darkest sides of Social Darwinism and its appropriation in totalitarian regimes such as Nazi Germany.⁶¹

Nevertheless, although the idea of evolution itself was all but absent in Ancient Rome, its legal system was much more advanced than Greece's. Also, Rome's legal system was itself a product of evolution, even if the idea of evolution was not pronounced during this time. John Kelly describes the legal system in republican Rome thus: 'there were on the civil side several different jurisdictions which did not exactly compete or overlap, but whose coexistence cannot be explained on theory, only by reference to their origins and to the typical settings in which they are found operating'.⁶² Kelly also notes that Rome's first emperor, Augustus (previously Octavian, nephew of the last of the Republic's rulers, Julius Caesar) did little to rupture this natural evolutionary course of the law as he 'appears to have had a genuine reverence for ancestral Roman laws and manners, and this alone might have led him to preserve everything in the

⁶¹ John Cornwell, *Hitler's Scientists: Science War and the Devil's Pact* (Penguin, 2004).

⁶² John Kelly, *A Short History of Western Legal Theory* (Oxford University Press, 1992) 42.

old constitution which was not inconsistent with his own permanent ascendancy'.⁶³

However, this was not to say Augustus did not put his own personal political stamp on Rome's legal system, as Kelly notes:

The old system of judicature still functioned as before, its procedures actually rationalized. But a silent, hardly visible transformation, even transubstantiation, had in fact taken place; because every part of the constitution now contained a new, tacit term, namely acquiescence in the will of an individual.⁶⁴

And:

Augustus and his successors, avoided demolishing the old republican structure, but they effectively created a new one alongside it, depending on and drawing its force from the emperor's personal authority.⁶⁵

Although Greece did not have as developed legal systems as the Romans, the Romans' legal systems were informed by Greek thought and philosophy. The Roman poet Horace's epigram addressing Greek philosophy on the Roman mind reads '*Graecia capta ferum victorem cepit* (captive Greece took captive her wild conqueror)'.⁶⁶

Kelly relates a particular event in Roman history, also noted by Cicero, of a visit of an embassy sent by Athenians in 155BC to petition the Roman senate for the reduction of a fine laid upon them in an arbitration for an offence against another Greek people which consisted of three leading

⁶³ Ibid 43.

⁶⁴ Ibid 44.

⁶⁵ Ibid.

⁶⁶ Ibid 46.

Athenian philosophers, including Phanaetius a follower of Stoic philosophy, who stayed on to deliver public lectures on rhetoric and presentation of argument which made an impression on their Roman audiences.⁶⁷

Kelly notes that ‘A Stoic philosophy became the principal influence of the Roman educated class, and on the Roman lawyers... and hence contributed to what legal theory the Roman world can show.’⁶⁸ Also, that ‘...the Stoic philosophy found a most congenial soil in the Roman temperament, too; the streak of austerity, of simplicity, of indifference to good or ill fortune’⁶⁹ and that:

....the Stoic view of the world virtually conquered the mind of the late Roman republic and of the early empire; almost all Roman jurists, whose profession began to emerge at about the epoch of the Scipionic circle, followed Stoic teaching, as did those Romans who themselves wrote on philosophic themes: Cicero at the end of the republic, Seneca in the first century AD, the emperor Marcus Aurelius in the second.⁷⁰

Nonetheless, apart from the rich legacy of philosophy, Kelly notes the impact of Greek models or methods of law on concrete Roman rules of practical law ‘was nil, or vitually nil’⁷¹ and paints a picture of a paucity of structured legal method in ancient Greece:

It (the law) was the one area in which the Greeks had nothing to teach their intellectual captives... the Greek cities had laws, and traditions of

⁶⁷ Ibid 47.

⁶⁸ Ibid.

⁶⁹ Ibid 48.

⁷⁰ Ibid.

⁷¹ Ibid.

lawgiving. But nowhere was there a legal science or any very sophisticated legal technique. A mid fifth century Greek law code such as that of Gortyn in Crete, might be as elaborate and as extensive in scale as the Twelve Tables enacted by the Roman legislative commission at about the same date; but the subsequent life of a Greek system was led without any jurist's profession to guide, organise, expound and develop it. Moreover, at any rate in Athens if we can judge from the speeches which have survived from the fourth century orators of whom Demosthenes was the most famous, litigation was conducted less in the spirit of a contest about the objective applicability of a legal norm than as a rhetorical match in which no holds were barred. Even in Athens we do not know the name of a single person who worked as a legal adviser (rather than as a court orator), or who taught law to students, nor the name of a single book on a legal subject.⁷²

Where did all this legal sophistication come from if not from the Greeks (like so many other aspects of Roman cultural life)? Kelly explains that 'already some time before the first encounter with the Greek mind...there were the beginnings of a legal profession of a kind that never existed in Greece and remained, unique in the world until the rise of the common lawyers in the high Middle Ages'⁷³ and:

This profession, pursued in some measure through a sense of public duty and the responsibilities of their class by men of rank engaged in running public affairs, was entirely secular, even though its remoter origins may lie partly in the function of the Roman priesthoods in an era when cult ritual, magic and the activation of legal forms were different aspects of the same complex of ideas, namely, those connected in the involvement of the gods in bringing about results in human affairs.⁷⁴

⁷² Ibid 48–9.

⁷³ Ibid 49.

⁷⁴ Ibid 49.

If one suspects from the above description of Roman law, there is a sense of it having evolved rather than being handed down from another already established tradition, Kelly removes all doubt when he states:

For a period of nearly 400 years, from the last century of the republic until the turmoil of the third century AD, the science of these jurists represents – together with the Roman genius for imperial government – the most characteristic flower of Roman civilisation, and the one least indebted to foreign models, evidently growing *spontaneously* from some part of the Roman national spirit without parallel elsewhere in the ancient world.⁷⁵

As noted above, however, while Roman law is perhaps a striking example of a legal system evolving in *fact* from very humble beginnings to a most impressive edifice that was to influence later legal systems in the Western World, it would not be correct to say such a system was informed in any appreciable way by the *idea* of evolution, although the *fact* of Rome's evolved legal system, on which the world's major modern legal systems are based, has undoubtedly influenced western legal theory and practice.

As mentioned earlier, the Epicurean theory of the origins of the state were set out in the Roman poet's Lucretius' *On the Nature of Things*. Unlike Russell, Kelly is of the view this theory of the origin of the state was not Epicurus' invention, but a Lucretian add-on.⁷⁶

This germ of a contractarian idea was taken up by Cicero, a slightly older contemporary of Lucretius who was familiar with the latter's work, and who wrote his treatise on the state (*De Republica*) which Kelly describes in the following terms:

⁷⁵ Ibid. Author's emphasis.

⁷⁶ Ibid 64.

The state is presented, first, in more general terms not unlike those of Lucretius: it is the ultimate fruit of man's instinct to associate with his fellows, broadening out from the primary association of marriage to parenthood. That instinct is the 'origin of the city, as it were, the seed-bed of the state...once one had explained this natural social instinct of man, the 'source of laws and of law itself...could be discovered.'⁷⁷

Kelly maintains that Cicero then goes further than Lucretius, citing from the *De Republica*:

Not every assemblage of men howsoever brought together makes up the populus, but an assemblage of a great number allied together in binding agreement...and in a sharing of interests...And the first cause of their coming together is not so much their individual weakness as the natural social instinct of men; for the human race is not one of solitary wanderers.⁷⁸

This conception of the social contract through Lucretius (assuming it is his idea and not Epicurus' as Kelly maintains), Cicero and later Seneca are examples of evolution as an idea (and perhaps the only ones) in Roman times. However, Cicero distinguishes his from Greek conceptions of the social contract and gives it a Roman flavour. Kelly writes:

That, in restating in Roman terms, the social contract theory of the state's origin which had already appeared among the Greeks, Cicero was conscious of the forerunners is perhaps proved by his express dissent from the idea – first put forward by the sophists – that the weakness of individuals had been their motive in entering the primordial social bargain.

In this contract based state there is (unlike the polity imagined long afterwards by Hobbes as under an absolute ruler whose dominion all have acquiesced in) no room for tyranny. Cicero represents tyranny, indeed the negation of the state itself.... A similar thought is expressed later by Seneca,

⁷⁷ Ibid 65.

⁷⁸ Ibid.

when he visualises an original golden age subverted by the vice and sinking under tyranny: it was then, and tyranny's antithesis, that the need of laws arose'⁷⁹

It is surprising that these evolutionary ideas have not had more influence on history; Cicero is often celebrated as effectively the world's first natural lawyer but his social contract theory does not get mentioned along with the usual suspects Hobbes, Rousseau and Locke, although his (and later Seneca's) version of the social contract seems no less sensible than those of any one of the aforementioned trio. Perhaps the times were not very receptive of these ideas. Kelly, quoting W.J Gough writes 'while contractarian thought and phraseology were evidently still in being, the whole political atmosphere was one of absolutism and submission' and thereafter observes 'he (Seneca) was forced under Nero, to commit suicide'.⁸⁰

It was not until many centuries later, that the evolutionary idea of the social contract was to re-emerge, namely with Hobbes in the 17th Century. Although Greek and Roman notions of the social contract often appear understated in works of philosophy, Hobbes and other more popular social contract theorists were not insensible to them, and were possibly inspired by these earlier theories.

Summing up, apart from social contract theory, there are no other evolutionary ideas worthy of note in ancient Roman times; however, its philosophy of Stoic virtue as noted above was to have a dramatic effect on shaping totalitarian inspired evolutionary thinking in modern times and assisted prominent religious movements which held sway during the

⁷⁹ Ibid 66.

⁸⁰ Ibid.

Middle Ages to effectively thwart the idea of evolution throughout that era. Roman law was the first real western jurisprudence and is itself a spectacular example of a mainly spontaneously evolved legal system, so its influence has been arguably strongest in the doing rather than the telling.

VII CONCLUSION

Although the idea of evolution in the way which that term is commonly understood and defined out the outset of this paper is primarily a modern phenomenon in that the idea has been only expressly adopted from the 19th Century onwards in thinking about change and development in the law, society and the natural sciences (particularly biology), the idea of evolution arguably would not have reached its full flowering (or malignant manifestation if one speaks of its deployment in totalitarian regimes) in later times without the intellectual foundations and attitudes of the Ancient World.

These foundations and attitudes are: Heraclitus' notion of constant change which is a necessary though not sufficient condition for the idea of evolution; Plato's confused attitude towards the notion of change with his hubris of arresting social change once a perfect State is installed on the one hand and his audacity of imagining such a State was possible on the other (inspiring, in respective order, modern day conservative elitists to turn back the clock to shore up their privileged positions or modern day totalitarians to change the world for their personal betterment, if no one else's); the influence of metaphysical arguments of change from Parmenides and others in their philosophies on other philosophers such as Hegel; the oppositional, supporting or questioning attitudes pioneered by the Stoic, Epicurean and Sceptic schools of thought respectively to ideas such as evolution; and Roman jurisprudence, if not for its explicit ideas (including

some of the earliest theories of the social contract), then from the fact of how it itself evolved, thus being a key influence in later times on the study of legal theory, actual legal practice and how later legal systems were themselves to evolve.