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Anton-Hermann Chroust

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## THE LEGAL PROFESSION IN ANCIENT ATHENS

### *Introduction*

Traditionally, the lawyer has three main functions: he may be the expert *adviser* (counselor) as to how his client should defend or bring legal proceedings, and as to how he should conduct legal transactions; he may be the skilled *agent* (attorney, solicitor, or proctor) who prepares these legal transactions or even conducts them for his client, as well as prepares cases in advance of trial; or he may be the experienced *advocate* who presents the case of his client to the court. Naturally, at different times and in different places some, if not all, of these basic functions of the lawyer are either unknown or simply outlawed. In addition, a class of real — that is, professional, expert, intelligent, and skillful — lawyers cannot possibly be found until there has been developed something like a settled jurisdiction with regular courts, a consistent legal procedure, and a distinct body of laws. For only then will the need arise for knowledge, skill, and experience in ascertaining actionable claims, in presenting these claims in their proper form to a regular court, and in assisting the court in the application of the law to these claims. It shall be shown whether the Athenian lawyer, under the conditions which existed in ancient Athens, did fulfil the

requirements expected of a modern lawyer, and whether, within the type of society he lived and worked, he had all of the three fundamental functions that are typical of a lawyer.

## I

Before the time of Draco (*c.* 620 B.C.), as far as we still can make out, in ancient Athens only the injured party was permitted to institute legal proceedings. The plaintiff could do so either personally before a judicial magistrate by acting as his own lawyer; or before the Court of the Areopagus through the agency of a member of that Court. The latter, however, was not so much the confidant and counsellor of the plaintiff as his "mouth-piece"; he merely gave voice to what the litigant wished to say, but was perhaps unable to say himself. He was primarily an official of the Court and, as such, his first duty was to pass upon the merits of the case and pronounce judgment accordingly. Thus, as was not unusual in early societies, the function of deciding a controversy and, at the same time, serving as spokesman for a party to it, were combined in one and the same person. We witness here also the practice, likewise quite common among primitive peoples, that the court itself claims to know what is best for the litigant and hence will act both the role of "personal helper" and "impersonal referee."

The so-called legal reforms of Draco gave the plaintiff the right to plead in person before the Court of the Areopagus. Hence he no longer had to depend on enlisting the services of a member of that tribunal in order to be heard. In addition, Draco permitted any citizen to arrest a homicide, who had illegally returned from exile, and personally bring him before the Court. In the resulting trial the citizen who had made the arrest would prosecute the prisoner. This probably marks the beginning of a long tradition which, at a later period of Athenian history, became a matter of public policy, namely,

that any private citizen, under the pretext of protecting the City, could personally prosecute anyone whom he suspected of being dangerous to the commonweal. At a later date, presumably as a result of Solon's legal reforms (c. 594/3), any citizen could personally prosecute any person whomsoever in an Athenian court for any crime against the community. Solon also instituted a right of appeal from magisterial decisions to the people, or to be more exact, to the heliastic courts. Around the year 508 Cleisthenes made these popular courts the courts of first resort rather than courts of appeal.

In the beginning, then, litigants in a private law suit and defendants in a criminal prosecution were expected to handle in person their own case before the court, a practice of which Aristotle fully approves. It is not strange that a primitive society should expect every man to fight his own battles, using his tongue or his hands as the occasion required. In Athens in particular the idea was firmly rooted that every citizen ought to take care of himself, and it seems to have been the policy of the early City, later so eloquently advocated by Plato, to do nothing for its citizens which they could do for themselves. In keeping with this attitude they were not permitted to employ advocates or agents unless they were totally incapable of attending to their own business.

This refusal to permit a man to be represented in his legal battles by a skilled "champion" did not work a great hardship-at the start; for, as has already been stated, there was no real need for such assistance until a settled jurisdiction and a consistent procedure had been developed — not until a distinct body of laws and procedural rules had been established requiring knowledge, skill, and experience in ascertaining and presenting claims in their proper form to a regular court, and in aiding the court in the application of the law to these claims. It was some time, of course, before these elementary conditions were even remotely attained in early Athens. Originally, trials or hearings were held before a judi-

cial magistrate or the Court of the Areopagus; they were probably very informal. There were no definite procedural rules, and there was no clear-cut distinction between criminal and civil cases. Hearings apparently consisted mainly of questions addressed to the litigant or defendant by the magistrate or by some member of the Court of the Areopagus, although it is quite likely that the litigants were permitted, particularly in the presence of a judicial magistrate, to question one another. Under these circumstances there was neither occasion nor need for the display of legal or oratorical talent: as a rule, an audience consisting of a single magistrate or of a Board of Elders does neither expect nor encourage nor appreciate oratory or legalism.

## II

This situation changed radically after the time of Solon, when the purely magistral courts and the Court of Areopagus were replaced by large popular juries, the so-called heliastic courts which were composed of at least five hundred Athenian citizens, who may be described as jurors.

At this point it would perhaps be helpful to say a few words about the post-Solonian courts and legal procedure in Athens. According to the issues or interests involved, suits at law were either public or private. Any citizen could institute a public law suit whenever a public interest was at stake, but only private parties could bring private suits. Homicide was prosecuted by near relatives and, consequently, was a private suit. Athenian law did not make the modern distinction between civil and criminal proceedings.

There were more than one hundred types of public and private law suits, the handling of which was somewhat arbitrarily distributed among the heliastic courts, certain administrative magistrates, and a number of judicial magistrates. Ordinary civil suits arising from contracts, for instance, as a

rule were heard by the Board of the Forty; criminal cases, except homicide and sacrilege, were tried before the *Thesmothetai* or the Board of Eleven; homicide and sacrilege were tried by the King Archon; and litigation arising from commercial transactions came before a special Board of Introducers.

The plaintiff had not only to determine the proper action he wished to take, but also to summon the defendant before the proper magistrate or court. If both parties appeared in court, the magistrate proceeded with the preliminary hearing of the case. Prior to the reforms of Solon this magistrate was empowered to pronounce the final verdict and, hence, heard all the evidence in the case. But subsequently, when the magistral decision became subject to appeal to the heliastic courts, or when the heliastic courts had become courts of first resort, the magistrate — conducting merely a preliminary hearing — needed only sufficient evidence to determine whether the case came within his jurisdiction, whether the plaintiff had an action under the existing laws, and whether the form of action was according to law. Otherwise this preliminary hearing itself was very informal.

Pleadings, as a rule, were filed at the preliminary hearing or investigation before the magistrate. The defendant answered either by direct denial, or by alleging that no action lay, or by pleading a sort of exception (*paragraphé*) which included the idea of both a special plea and a demurrer. Both parties had to swear to their pleadings and answers; a complete copy of these pleadings and answers was filed with the "office of records," and an abstract of them was posted publicly.

Legal proceedings before the Board of the Forty involving a sum of money in excess of ten drachmae were assigned to a "referee" who first tried to effect a settlement. Failing in this he would then make the award on the basis of the evidence submitted. All evidence was reduced to writing. If the decision

was appealed to the heliastic courts, as a rule no further evidence could be introduced before that court. Witnesses who had made depositions before the referee could be summoned before the court of appeals to acknowledge their statements which were read to the court, but they could not be cross-examined.

The heliastic courts, which were an expression of the absolute judicial sovereignty of the people, were bound by no legal technicalities. They were presided over by a "chairman" who was responsible for the conduct of the case, although he could not participate in the proceedings or the verdict. Neither did he have any authority to compel the parties to confine their remarks to the issue at bar, or to declare inadmissible, improper or irrelevant evidence. This alone should explain why so many trials before the heliastic courts got completely out of hand.

### III

Before these new courts the litigant or defendant was compelled to deliver a set speech intended to sway an extremely vacillating jury which, for its own entertainment, expected — and often witnessed — brilliant oratorical displays as well as rousing dramatics. A litigant now had to face a large audience of emotional listeners who appreciated oratorical and, at times, even legalistic niceties, and lent a willing ear to appeals to passion, piety, and prejudice. They were, moreover, prone to give vociferous expression to its approval or disapproval in a most disconcerting manner. Nothing but a carefully prepared and expertly delivered argument could save the litigant or defendant from an unfavorable verdict. The advent of the heliastic courts, as will be shown later, also brought about the rise of professional accusers or sycophants, a body of unscrupulous busybodies who turned Athens into a city of extreme litigiousness.

As the new heliastic courts developed, the old rule requiring a litigant or defendant to plead his own case was relaxed to the extent of permitting him to secure assistance in the presentation of his cause. The request to the court for permission to make use of such assistance, on the whole, was purely perfunctory. It was always required but apparently never refused, particularly if the petitioner could show reason why he wished some one else to take over his case. A request of this kind, however, often prejudiced the case of the petitioner. It seems that the court, as a rule, entertained the naïve ideas — so common among primitive people — that one who could not or would not argue his own case in person must not have much of a case.

#### IV

The procedure regarding legal assistance before a court in ancient Athens, as a rule, then, took one of three forms: first, a litigant refrained from speaking at all and had some one else, the *synegoros*, speak in his behalf; or, second, he spoke for himself and at the conclusion of his speech had one or several people, the *syndic*, speak for him; or, third, he delivered before the court a memorized speech written for him prior to the trial by a hired professional, the *logographer* or “speech-writer,” who though he never appeared in court was an essential element if the third procedural form was followed. By hiring a speech-writer the litigant at least preserved the fiction that he was delivering his own speech; unless he was able personally to appear before the temperamental and impressionable heliastic court and tell his story in a fairly effective manner, he had little or no chance to escape an unfavorable verdict.

It is at this point of Athenian social, institutional, and legal development that the professional forensic speech-writer or logographer made his first appearance. The history of the logographer is an interesting one. After the victorious



repulsion of the terrible Persian foe in 480/79 B.C., the Athenian people, matured by these stern experiences, gradually began to realize the decisive value of solid knowledge and professional skills in every walk of life, particularly in an active political life. It was recognized that the man of knowledge and the master of professional skills was generally the most useful as well as the most successful person. Out of this important realization grew the conviction that theoretical schooling was indispensable for a successful practical life and especially for a successful political career. For, indeed, Homer had already stated that a leader of men was always "a speaker of words and a doer of deeds" — incidentally a brilliant definition of a good and competent lawyer. Stimulating and often sharply championed contests over the best means of promoting the common good soon became an essential aspect of the newly established democratic polity at Athens. But such contest, above all, aimed at persuasion; and persuasion, in turn, requires that intelligent eloquence which determines the minds and hearts of men. Thus the new political situation demanded of an ambitious Athenian politician the ability to speak effectively in public, the more so, since eloquence had become a decisive social power and a determining political factor. Hence arose a demand for teachers of eloquence. The demand was met by the Sophists who became the first teachers of eloquence. With their aid Greece produced during the greater part of the fifth century B.C. a large number of eloquent public orators, including some renowned forensic speakers or speech-writers.

Undoubtedly, a good lawyer always could be of great, if not decisive help to a litigant, and particularly to a defendant in a criminal action. But the Athenian heliastic courts were really a sort of popular assembly expressing the judicial sovereignty of the people. They acted under the principle that a citizen should have a personal hearing before his peers and, hence, liked — nay, demanded — to see a man stand up

for himself. Nothing could serve the interest of the litigant or defendant so well as a speech delivered in person. It was a matter of common experience, however, that not too many litigants were equal to this task, particularly since the "jury-audience" at Athens — which actually considered a trial a kind of "oratorical contest," a spectacle rather than a serious discussion of facts and the law applicable to these facts — was extremely critical concerning such oratorical performances. To meet this particular situation there appeared during the latter part of the fifth century B.C. that figure who was called the professional logographer. This "functionary" as has already been stated prepared an address which the litigant or defendant memorized and then, at the trial, delivered before the court. By hiring a logographer the litigant also preserved the appearance of speaking for himself extemporaneously, something which always impressed the court. Forensic speech-writing soon became an essential part of general rhetoric which, according to the theory prevailing at the time, subsequently was subdivided into epideictic, deliberative, and forensic oratory. This fact alone should be an indication of the importance which forensic oratory and forensic speech-writing had attained within a very short period of time: it was considered the equal of epideictic and deliberative rhetoric, and a goodly number of the most famous ancient orations that have come down to us and are still considered masterpieces of classical oratory are simply forensic speeches either delivered by the author himself or prepared for some client involved in litigation.

From all this it is a reasonable surmise that, at least in earlier times, there was no such thing as a distinct class of especially trained and experienced men whose particular office it was to represent and assist litigants in a court of law. Originally, the forensic speech-writer was simply a general rhetorician and only remotely, if at all, related to the legal profession. At best he might be compared to the modern

“attorney on the brief,” with the difference that the client himself had to recite this brief in court. But in the course of time, due to the many requests for his “legal services,” he must have acquired some knowledge both of law and legal procedure, although the fact that he had to work behind the scene made it almost impossible for him fully to display whatever legal knowledge he may have possessed. Having to suppress his identity when composing a forensic speech that would seem to be the utterance of his client, he was often compelled more or less to conceal his legalistic talents, with the result that these talents, if he had any, frequently were wasted. The elaborate pretense involved in this sort of thing naturally tended to obscure not only the working methods of the forensic speech-writer, but also his professional relationship with his client.

But instances could and did arise where the forensic speech-writer had to do more than merely compose a speech to be recited by the client in court. Not infrequently he was called upon to advise his client on matters of law, procedure, court room tactics, *etc.*, very much as is the modern English solicitor. Where different remedies or actions at law were available, he probably instructed the client as to the best and most promising course of action. Thus he must have possessed some rudimentary knowledge of the law, a very important asset, since, then as now, an opponent was always ready to take advantage of a false legal step, including a grammatical error or a bad pronunciation. Thus in matters of citation, interpretation, or application of the law, the assistance of an expert was well-nigh indispensable. Ignorance of the law, a wrong citation, or oratorical deficiency, could and often did have disastrous consequences.

From the moment a client decided to retain a forensic speech-writer, he had to rely fully on him and his oratorical accomplishments and legal knowledge. As a matter of fact, for better or for worse, he put his fate completely in the hands

of his logographer. That he did not always fare badly when he did so is attested by the great success which accompanied the forensic work of Antiphon of Rhamnus, one of the earliest and most successful forensic speech-writers in Athens. Antiphon apparently never went to court personally and, hence, may be called the prototype of the successful logographer. It was said of him that no one could do more for his clients than he, whether their business was in the courts of law or in the assembly.

Obviously, the first task of the forensic speech-writer was to familiarize himself with the facts of the case and with all available evidence in order to present them in a clear and convincing manner. But since he was compelled to furnish his client with a finished product that did not admit of any changes once it was in the hands of the client, the forensic speech-writer had also to anticipate, as far as possible, the arguments and counter-arguments of the other side. For a client who, on account of his ineptitude or timidity, had to have his forensic speech "ghost-written," could hardly be expected, and would hardly dare, alter the speech by making changes or additions in order to meet the arguments of his opponent. Hence correct prediction and skillful anticipation of the opposing arguments could determine the outcome of the whole controversy.

In the light of what has been said about the services rendered by the forensic speech-writer, it could be argued that the Athenian logographer in some degree corresponded to our idea of a lawyer. Actually it appears that speech-writing, including forensic speech-writing, was the only service rendered to litigants which soon became professionalized. The forensic speech-writer, moreover, seems not to have been forbidden by law to accept pay for his services. In contrast, one who appeared in court for another and acted in his behalf, for a long time was not permitted under the law to accept any remuneration for his efforts.

Forensic speech-writing, it should be borne in mind, was the occupation of nearly every outstanding Athenian rhetorician. For the most part, in all probability, they gained an ample livelihood by this kind of professional activity. Thus old man Strepsiades, in the *Clouds* of Aristophanes, anticipates that, upon completion of his training in forensic rhetoric and legal chicanery, he will have a lucrative "legal practice"; and that "many a prospective client will linger at [his] door wishing to consult him and to take his advice" and, we may assume, pay him a large fee for his pains.

## V

Whenever a litigant or defendant refrained from speaking at all in court and had some one else speak in his behalf, this substitute usually was called a *synegoros* or (and perhaps more correctly) a *hyperapologoumenos*. During the fourth century B.C., such *synegoroi* were a constant feature of litigation, but only on extremely rare occasions, and then only for good reason, was a litigant permitted to be absent during the trial and turn over his case completely to another. It seems that the heliastic courts insisted on getting a personal impression of the litigant by seeing him in action before the assembled jurors. Thus, in the year 489 B.C., owing to a severe wound, Miltiades, the hero of Marathon, received permission to have his friends speak for him. But Miltiades was personally present in court on a litter, and we do not know whether his friends came to his assistance voluntarily or upon his express request. Pericles, we are told, defended his friend Anaxagoras when the latter was indicted for blasphemy but failed to make an appearance in court. In 355 B.C., the famous orator Isocrates, in his own case, could not speak for himself on account of a serious illness and was represented by his adopted son Alphareus, who probably recited a speech written by Isocrates.

In 350 B.C., one Phormio was represented by Demosthenes. Phormio, a former slave who had become a banker, was nearly illiterate and wholly inexperienced in public speaking. Demosthenes pointed out to the court that his client knew little Greek and, consequently, would have little chance for a favorable verdict from the court, which, indeed, oftentimes judged a case not on the basis of its legal merits but rather by the oratorical performance and persuasiveness of the litigant. But it must be assumed that Phormio had formally requested the court for permission to have Demosthenes represent him. It is even possible that Phormio made a few statements of his own before turning over his defense to Demosthenes. And in his defense of Helus of Mytilene, Antiphon, in a forensic speech which he wrote for Helus, made the latter stress his inexperience in legal matters as well as his complete lack of oratorical fluency.

Hence it is often difficult, if not impossible, to draw the line of demarcation that separated the *synegoros* from the *syndic*, that is, a "friend" who, after the principal had spoken a few words, took over the handling of the case. This could be done, of course, only upon request by the litigant granted by the court. As a rule it was couched in the following words: "I have said all I could say, and I would like to call on some of my friends to come to my assistance." Such a request, as already indicated, was never refused, although under certain circumstances it could prejudice the case of the petitioner. The request having been granted, the friend, who from now on acted as a sort of substitute or advocate, assumed full responsibility for the whole case: he presented the facts and the evidence as he thought best, cited and discussed the law applicable to the facts presented, and delivered the final speech or summation, just as the principal himself would have done had he chosen personally to handle his case.

At first such substitutes — and the earlier *synegoroi* and *syndicoi* were nothing other than a sort of substitutes —

usually were chosen from among a man's relatives, more intimate friends, neighbors, or from among persons who belonged to the same "club." Apparently it was presumed that on account of their acquaintance and close relationship with the litigant or defendant, these people not only had a detailed knowledge of his affairs, but also knew him intimately as a person and a citizen. They were, in fact, an outgrowth of the old institution of the "supporting oath" — the practice of assisting a clansman or friend by swearing to the truth of his allegations. Thus in one way they also became his character-witnesses (an important aspect in any Athenian trial) as well as his champions. It seems to have been a practice, too, for townships (*deme*), like some Athenian "clubs," to furnish legal aid whenever one of their members or fellow-demesmen found himself in legal difficulties. This particular practice probably was a survival from the old patriarchal days when, as a matter of routine, the head of the community, the *patronus*, stood up for any member of the community. It became of particular significance for the future development of the legal profession in ancient Athens, for it heavily contributed to the spreading popular acceptance of the policy of employing especially qualified persons to act as one's legal representative or counsel.

The practice of employing experienced legal representatives or advocates was further stimulated by the many clubs that were especially devoted to serving the many interests of their members. Indeed, there existed in Athens clubs whose main purpose it was to render legal aid to their members, and practically every Athenian of consequence belonged to one of them. When Meidias, for instance, was charged by Demosthenes with aggravated assault, he was aided in his defense by some of his fraternity brethren. And Eratosthenes likewise was assisted by members of his club when he had to defend himself against a charge of embezzlement. But these clubs did more than merely offer legal assistance: fraternity breth-

ren, particularly the wealthier ones, could use their money and their influence not only to secure the services of an outstanding forensic orator or logographer, but also to influence the court or the authorities.

## VI

At some point in Athenian history, the exact date of which can no longer be ascertained, the legal representative or advocate became a professional man, and thereafter it was customary to pay him for his professional services. The evidence seems to indicate that professional advocacy was already well developed during the last quarter of the fifth century B.C. This is supported by the fact that around the year 403 B.C. a statute was enacted in Athens forbidding the paying of advocates, at least in private law suits. It is now believed that this statute, which some of the best informed scholars consider genuine, was connected with the restoration of Athenian democracy after a short but revolting oligarchic interlude. It seems that the restored democracy of 403 B.C. considered undemocratic the employment of professional lawyers, the more so since a large number of outstanding Athenian lawyers had played a leading role in the overthrow of Athenian democracy both in the year 411/10 B.C. and again in the year 404 B.C. (In passing we may point out here that the legal profession was also abolished following the French Revolution and the Russian Revolution of 1917.) Several reasons were advanced for prohibiting the payment of legal fees. It was argued, in the first place, that to allow advocates to be paid gave the rich a decided advantage over the poor in that the former could afford the services of the most successful and, accordingly, most expensive advocates. In the second place, the payment of a fee to an advocate was frequently identified with bribery. And finally, Athenian democracy, at least in theory, insisted that mutual helpfulness among its citizens was solely a matter of civic-minded-



ness and, consequently, should not be degraded to a kind of professionalism or to a means of making money. There was, however, a further reason for the Athenian aversion to professional advocates: the sovereign Athenian people — and few peoples in history have been more insistent on the full exercise of sovereignty even in the most trifling matters — wanted to deal directly with the litigants or defendants rather than with their paid or “bribed” agents or representatives. The intervention of a paid agent or advocate was considered a kind of interference with that unlimited sovereignty. But there seems to have been no serious objection on the part of the public to the services of an advocate if rendered by relatives, associates, or friends, who were expected to give their services freely, for this was regarded as being in conformity with the spirit of mutual helpfulness so vital in an ancient democracy. It was only when these services were rendered for a fee and, hence, became professional, that public opinion became resentful.

It goes without saying that since it could not effectively be enforced, the statute forbidding the payment of fees to a lawyer was generally disregarded. The constant violation of this statute — a fact of which nearly every Athenian was fully aware — prompted Lycourgus publicly to denounce certain men who continually accepted money for helping defendants who were in no way related to them. The methods of circumventing the law were as numerous as they were ingenious: sometimes the client himself brazenly remunerated the lawyer, knowing that his action probably would remain undetected; his friends, associates, or relatives hired a lawyer for him; he could secure the services of a lawyer by appointing him to a sort of general managership of all his affairs; or he hired him as a plain servant. He could, moreover, include his advocate among his most intimate friends, invite him to his home and shower him with valuable presents. And since nearly every Athenian of any consequence belonged to a club

or fraternity (*hetaireia*), he could always secure counsel through the instrumentality of his club, for many of these clubs existed largely for this very purpose.

Demosthenes and Aeschines, themselves the most renowned professional lawyers and forensic speech-writers of their time, in order to discredit their opponents, actually went so far as to use in court the designation of speech-writer or logographer as a term of scathing reproach. And Hyperides, likewise a professional lawyer and speech-writer, in a speech which he had composed in behalf of a plaintiff for a stiff fee, described the defendant as a "common fellow," a "low character," and a professional "speech-writer" — certainly an unusual crescendo of invective which the court understood only too well. Demosthenes, who handled some very lucrative cases, was somewhat the hypocrite when he complained that in Athens the poor man was at a disadvantage due to his financial inability to retain the services of a competent lawyer or speech-writer. Plato likewise commented on this situation, maintaining that through the assistance of a professional lawyer or speech-writer cases could be won irrespective of their merits, and that, as a result, justice was at the service of whomsoever was able and willing to pay for the services of a professional lawyer or speech-writer.

This negative attitude toward the professional lawyer was in keeping with the general dislike or, rather, mistrust of experts that was characteristic of Athenian democracy. More than one contemporary author bitterly complains about this attitude. The sovereign people of Athens appear to have believed that by his expertness a man set himself apart from, and hence, against, the democratic community, in that by his superior skill and knowledge he became part of an undemocratic elite or aristocracy. The fate of Antiphon, according to tradition the most outstanding and most successful lawyer of his time, who was put to death in the year 410 B.C. because of alleged participation in the oligarchic reaction of

411/10 B.C., furnishes a typical example of this Athenian aversion to the expert. Antiphon, it is obvious, was eliminated primarily because he was an outstanding professional man and, therefore, was suspected by a society which apparently believed that professional excellence was not only undemocratic but actually anti-democratic.

As a matter of fact, throughout Greek literature we find many exceedingly unfavorable comments about lawyers and public prosecutors, indicating not only that the use of lawyers and public attorneys or prosecutors had become a common practice by the end of the fifth century B.C., but also that this practice had become very unpopular. The classic parodies on professional lawyers and public advocates seem to be the *Wasps* and the *Clouds* of Aristophanes. Apparently these two "burlesques" reflected the public sentiment against the rise of a new legal profession in Athens. But more than that; they also manifested the profound resentment of the old-timers. This may be gathered from the *Acharnians* and the *Knights* of Aristophanes which contain bitter complaints by the older men against brash young lawyers who are said to be extremely skilled in the use of hair-splitting dialectics and legal arguments. Law and medicine, we are told by Aristophanes, are the two professions which are permitted in Athens to slay with impunity.

Obviously when Aristophanes composed his comedies, that is, during the last quarter of the fifth century, there must have existed a very active legal profession of a sort in Athens. It was this new profession which came in for such severe criticism; and, in many instances, deservedly so. Plato, in his dialogue *Gorgias*, maintains that the lawyers and forensic speech-writers of his time possessed neither any knowledge of the law nor any acquaintance with facts, but preferred to indulge in an astute game of "make-believe." And in his dialogue *Theaetetus* he observes that lawyers merely persuade people and make them believe whatever they want

them to believe. Isocrates, himself a lawyer and forensic speech-writer of great repute, came to the conclusion that only a city as litigious as Athens could support a large number of lawyers; elsewhere they would starve. He also insisted that every client was a person who either was in trouble himself or responsible for the troubles of another, but never a solid citizen. And we are all acquainted with the *Clouds* of Aristophanes, a scathing parody on lawyers, forensic speech-writers, philosophers, and orators in general, who make the unjust appear to be just, and the crooked seem to be straight. Then there is Plato's description of "a man [who] is not only a life-long litigant, always spending his days in court either suing someone or being sued, but also a person of bad taste who prides himself on this. He is ready to fancy that he is the past master of every form of cunning; and he will take every crooked turn, and wiggle in and out of every hole, bending like a willow and getting away with it."

It is important to keep in mind, however, that the early legal profession in Athens, aside from being in public disfavor, was still a very young and very inexperienced profession. Here was the infancy of a difficult and complex profession which would have to grow slowly and painfully into maturity. The Athenian legal profession, if this term can be at all applied to the legal practitioners of ancient Athens, displayed all the faults and shortcomings of the early beginnings of every great calling, and was chastised accordingly. But there were men in it of high probity and outstanding ability, to whom can be traced through the intervening centuries of struggle and strife, much that is great in the traditions of the bar.

The general aversion to, and distrust of, the professional lawyer also explains the silence that surrounds the life and professional activities of some of the most outstanding Athenian lawyers and forensic speech-writers of the late fifth and the early fourth centuries B.C. In order to escape unfavor-

able publicity and harmful notoriety, the early Athenian lawyer, it seems, had frequently to do his professional work in anonymous obscurity. Antiphon who, as already noted, had acquired such an outstanding professional reputation that he had incurred public enmity, was compelled to do his legal work behind the scenes, and to refrain from appearing in public in behalf of a client. His public advocacy of any cause would have been more detrimental than helpful. And the same was true of the renowned lawyers Isaeus and Lysias, who played their most important roles as lawyers behind the scenes by merely advising clients in secret and by composing their forensic speeches.

## VII

In the case of so-called states-attorneys, that is, lawyers who were retained by the City itself to protect some public interest, there always existed a tendency toward professionalism. This tendency was somewhat checked, however, by a statute which forbade the employment of the same person more than once. The main purpose behind the statute apparently was to bring about a fair distribution of this kind of public service. Since the remuneration was actually negligible, this statute must have been concerned primarily with establishing a policy to curb the possible rise of a professional class of prosecutors and lawyers. But, in as much as there just were not enough competent lawyers to be found for the important task of adequately safeguarding the basic interests of the City, this law, too, was ineffectual: the same lawyers had to be employed again and again.

Although the statute forbidding the payment of fees to lawyers was constantly disregarded, it nevertheless had certain far-reaching psychological effects. Any lawyer or legal representative acting in behalf of a client, unless he was in reality a friend or relative, was likely to be suspected of having undertaken the case primarily in the expectation of

some financial reward. If entertained by the court, this suspicion could have disastrous consequences for the client. Hence it is not surprising that, on the whole, lawyers were always on the defensive, attempting to justify their appearance in court by claiming to be either a remote relative, an associate, or a "friend" of the litigant they represented. Thus Isaeus, appearing for two of the claimants to the estate of Nicostratus, insisted that they were friends and close associates of his, as their father had been before them. "It seems, therefore," Isaeus continued, "that it would be reasonable that I should intervene in their behalf to the best of my ability." Such fictions, often brazenly untrue, were a constant feature of Athenian trials and were maintained for some time with apparent success.

As an additional justification for his appearance the lawyer could always make the unusual plea that he did so because he was an enemy of the opposing side or the opposing lawyer and therefore had a personal interest in the outcome of the case. When Demosthenes defended Ctesiphon, it is obvious that he considered himself on trial. The charge which Aeschines had brought against Ctesiphon was that the latter had illegally proposed that Demosthenes should be rewarded by a golden crown for his services to the City. And when Demosthenes defended Phanus, he was definitely interested in the outcome of the law suit; for the action against Phanus arose out of the proceedings which Demosthenes had been compelled to take against his dishonest guardians, in order to recover property which they had embezzled.

Owing to the general dislike of the professional lawyer, and in order to overcome this aversion, Anaximenes made the interesting suggestion that a lawyer should justify his activities in behalf of a client with the disarming remark that in a true democracy every one helps another to the best of his abilities. He also maintained that there was really no difference between giving a man legal advice and teaching or

instructing him, which certainly was a legitimate activity. These remarks further demonstrate that the professional lawyer in Athens was constantly on the defensive, trying to justify his very existence. Apparently a host of hand books or *Lawyer's Guides* were circulated which listed all the possible and plausible arguments by which a lawyer should or could justify his appearance in court in behalf of a client. The very existence of such handbooks indicates the precarious position of a professional lawyer in Athens. For a lawyer, who was not in some legitimate way related to his client, was always at a serious disadvantage and under the necessity of explaining his presence in court, often by a miraculous distortion of fact.

The general aversion to the professional lawyer also prevented him from being recognized as an expert on the law. He was never permitted to speak with authority to the court on any point of law. Owing to the many public services they had rendered to the republic, a few lawyers in Athens, no doubt, gradually acquired some influence in the affairs of the City or in transactions before the courts. But it is exactly this type of man who appeared in court most infrequently, and their prestige was based on their extra-legal achievements rather than upon their knowledge of the law. Pericles is perhaps the classical example of this type.

What, then, attracted young men in Athens to choose law as their profession? First of all, since the professional lawyer often ran great risks, his remuneration, though forbidden by law, must have been considerable. In addition, the successful prosecutor of persons concealing confiscated goods could receive as much as three-fourths of the money recovered, and one who secured conviction of persons charged with having defrauded the public was given a liberal percentage of the money recovered or the fines levied. The successful prosecutor of an alien who illegally posed as an Athenian citizen received one-third of the proceeds of the sale of the person and

property of the convicted alien. One-half of the value of goods involved was the reward for the successful prosecution of a breach of trade regulations, customs laws, and mining laws. Aside from these purely material gains, there were other inducements. An outstanding record in public service, particularly as states-attorney, was always a definite asset in that it carried the promise of an important political career in the future. Many leading Athenian statesmen during the fifth and fourth centuries B.C. won public acclaim and advanced their political fortunes in the role of public prosecutors. Pericles, as is commonly known, made his political debut by prosecuting and securing the conviction of Cimon.

### VIII

No legal system and no body politic can function properly without adequate provisions for the prosecution of public offenders. The orderly and efficient administration of justice requires that the body politic and its many and varied interests be competently represented by a states-attorney. It has already been shown that this develops a tendency toward professionalism, which a special (though ineffectual) Athenian statute had tried to curb by providing that the same person may not be engaged twice as states-attorney. Lycourgus, the most severe and probably most conscientious states-attorney in Athenian history, once remarked that "the three most important provisions for guarding and preserving democracy are: first, the laws, secondly, the legal processes [by which term he meant the states-attorneys], and, thirdly, the decisions of the courts." Then he went on to say that it was the function of the states-attorney or prosecutor "to bring to justice those who are liable to the penalties prescribed by law. For neither the law nor the decisions of the courts are of any avail without someone to bring offenders to justice." What Lycourgus tried to stress here was the necessity of



trained and competent public prosecutors as an absolute prerequisite for the proper functioning and flourishing of the body politic.

One of the remarkable features of Athenian democracy was the practice of electing the magistrates of the City by the use of the lot, a method severely criticized by many contemporary publicists and philosophers. The use of the lot is certainly a poor way of selecting a competent lawyer to safeguard the vital interests of the commonwealth. No ordinary citizen, no matter how eager and patriotic, can be expected successfully and competently to perform such tasks. Out of sheer necessity, therefore, a class of professional lawyers gradually emerged, who could efficiently handle such matters and, hence, were constantly called upon by the City to officiate whenever a situation arose that demanded expert services. This contributed in no small degree to the rise of a distinct legal profession. Nevertheless, public opinion, on the whole, persisted in opposing these developments, maintaining that the employment of a special lawyer by the City, particularly in criminal actions, was undemocratic in that it gave the state an unfair advantage over the average citizen. In sum, the Athenian, seems to have resisted the evolution of expert professional states-attorneys on the ground that expertness and professionalism were contrary to the spirit of democracy. We, too, have heard similar complaints from people who apparently hold to the belief that democracy is synonymous with inefficiency.

The first known instance of the employment of an experienced special counsel by the City was the appointment of Solon, the famous lawyer-statesman, who around the year 565 B.C. officially and successfully represented Athens in an arbitration with Megara over the island of Salamis. In the year 463 B.C. Pericles, the illustrious lawyer-statesman, was especially employed by the City to handle the prosecution of Cimon, at one time the most powerful man in Athens. It

seems that a conviction of this renowned general was of utmost importance to the City which, therefore, retained the best lawyer for this purpose. Special attorneys were also appointed by the state in the famous treason trial of Antiphon and Archeptolemus, who had been indicted for their participation in the oligarchic revolution of 411/10 B.C. The ten *strategoï* were ordered to arrest and bring to trial these two "traitors," who subsequently were convicted and executed. When Demosthenes, together with others, was put on trial for allegedly accepting bribes from Harpalus, the City appointed ten special lawyers for the prosecution. And Anytus, together with Meletus and Lycon, was commissioned by the City for the special purpose of prosecuting Socrates, a fact known to all those who have read Plato's *Apology*.

Aside from these instances there were other occasions when Athens resorted to professional lawyers in order to look after some particular interest of the City. Hyperides, an outstanding lawyer of his day, was delegated by Athens to represent the City before the Amphictionic League in a dispute that had arisen between Athens and the island of Delos. Hyperides also was officially appointed by Athens to defend an Athenian youth who had been charged with a foul at the Olympic games. This incident alone is a clear indication that by this time the professional lawyer had begun to be regarded as an important functionary of organized society, and, as such, he received some public recognition. For good or ill, however, such states-attorneys were paid a very small fee for their efforts.

There were also less spectacular occasions which called for the services of an experienced professional lawyer or states-attorney, as in the case of the complicated proceedings that surrounded the repeal or amendment of some existing law. Any Athenian citizen could appear before the commissioners, and speak for or against the proposed change. But the sovereign people of Athens as a whole were always repre-

sented by five lawyers, especially appointed by the City to defend energetically the old laws and to oppose vigorously any innovations. Again, ten special attorneys were officially appointed by the City to assist the states-auditors in auditing public funds. If any irregularity was discovered, they were to represent the City as states-attorneys in the resulting criminal action.

## IX

Around the year 594 B.C. Solon decreed that every Athenian citizen without exception had the right to champion the cause of the commonweal in any Athenian court. By this drastically novel measure he intended to accustom citizens to "act like members of a single community, and to be sensible of and to resent one another's injuries." Thus anyone who wished to do so might prosecute an alleged wrongdoer or public enemy, whether or not he himself had suffered from the alleged wrong. The ghastly result of such practice was that fanatics, incompetents, schemers, misguided patriots, and plainly ambitious persons readily volunteered their services as self-appointed saviours of the City. But otherwise decent people also considered themselves called upon to "strike a blow for democracy." In this manner Solon's decree engendered both selfless and idealistic acts of true citizenship and dastardly manifestations of spite and self-seeking ambition. Public opinion, too, played an important role in inducing citizens to assume the part of a self-styled public prosecutor or states-attorney. A man who persistently refused to take an active part in public affairs ran the risk of being called a "slacker" or an unpatriotic person. This epithet carried a reproach that could completely ruin a man. Pericles had already remarked that a man who took no part in public affairs was regarded in Athens "not as one who minds his own business, but as one who is good for nothing." And Demosthenes denounced Timocrates and Androtion, two notorious politicians,

for their conspicuous failure ever "to have appeared as the accusers of . . . [some public wrongdoer]," and for having failed "to express their indignation at the wrongs inflicted upon the City."

A good record in public service, on the other hand, was always a distinction that one day might lead to a distinguished political career. One form of public service that could be rendered by every citizen was the protection of the City from its alleged internal enemies. Hence it is not surprising that many leading Athenian statesman of the fifth and fourth centuries should start their public career as self-appointed public prosecutors or states-attorneys, seeking to advance their fortunes by prosecuting some real or imaginary public offender. Naturally, they were sometimes at pains to stress their patriotism. Thus Aeschines once addressed the court as follows: "When I saw that the City was being seriously harmed by the defendant . . . I decided that it would be a most shameful thing if I failed to come to the defense of the whole City and its laws, and to your defense and my own." Andocides proclaimed that he considered it "the duty of a good citizen to undergo dangers for the democracy and not to keep quiet about public matters for fear of incurring personal enmity." But perhaps the most telling statement concerning the moral and patriotic duty of every citizen to prosecute public malefactors was made by Lycourgus, who considered this sort of prosecution as a sacred duty he owed the City: "For the sake of my native land and the temples and the laws I have brought this action as I should. . . ."

Things got really out of hand when in the year 410 B.C. Demophantus enacted a statute which provided that anyone participating in the overthrow of Athenian democracy should be declared a public enemy, whom it was the civic duty of every Athenian citizen to slay. A veritable reign of terror resulted from this decree which endangered all orderly administration of criminal justice in Athens. In the words of Lysias,

some of the more notorious professional accusers, taking advantage of this statute, while reaping personal gains from the City's misfortunes, . . . inflicted the most serious losses on the public weal. . . . They did not stop until they had involved the City . . . in the worst of disasters, while raising themselves from poverty to wealth."

The many advantages connected with this sort of "legal practice" of necessity led to many serious, not to say scandalous, abuses. Personal enemies, political rivals, and business competitors constantly lodged frivolous and false charges. In this unhealthy atmosphere, otherwise honest and decent people, in their anxiety to be good citizens, tended to become overzealous and officious. But when clever and unscrupulous men for their own gain began to make a veritable profession of indicting people indiscriminately, they constituted as grave a threat to decent citizens as the vilest malefactor. Among other things, they played upon the fears of the weak and the timid in order to extract hush money. They were called *sycophants*, that is, persons who, according to the apt definition of Demosthenes, "make all kinds of charges and prove none." Their business, Lysias maintained, "is to involve in litigation even those who have done no wrong; for from them they can expect the greatest financial gains." And Isocrates observed that the sycophants "by displaying their power over those who have done no wrong . . . get even more money from those who are clearly guilty of crimes." The designation sycophant, which carried a number of ugly implications, was in fact a compound term denoting a common informer, barrator, busybody, rogue, liar, scoundrel, slanderer, extortionist, and pettifogger, whose arsenal consisted of threats of legal proceedings to extort money, false accusations, malicious prosecution, abuse of legal process for fraudulent or mischievous purposes, calumny, and conspiracy. He was, in the words of Aristophanes, "the source of all woes."

The sycophant, the most despicable excuse for a lawyer known to recorded history, for the sake of notoriety, self-aggrandisement, and profit, masqueraded as the patriotic watch-dog over the welfare of the City. He always posed as a great public benefactor, the savior of his nation. Such revolting practices, revealing the total absence of even a modicum of professional pride and honor, were facilitated by the lack of an organized bar. No wonder that decent and respectable lawyers in ancient Athens should make great efforts to avoid being regarded as sycophants. Hence they would frequently preface their arguments or pleas with a remark such as: "Not as a sycophant have I brought this suit"; or "I have never brought a public suit against a citizen"; or "It is not by reason of any fondness for litigation that I have brought this suit." Conversely, the charge of sycophancy was often hurled against an opponent or his lawyer, in order to prejudice him with the court or jury.

The sordid activities of the professional sycophant, as well as the ill-advised and over-zealous "patriotism" of certain self-appointed champions of the commonweal, created a nearly intolerable situation. But when they combined with the sentimental, vacillating, and irascible mood of the average Athenian jury, the result was outright calamitous. Public opinion would have been the sole effective check upon their pernicious and vile conduct, and there were occasional outcries of indignation to end this reign of constant terror. But they went unheeded. The deplorable fate of the generals who had been victorious in the battle of the Arginusae Islands in 406 B.C. is a case in point. For their allegedly criminal failure to rescue some of the Athenian survivors — the weather was threatening and any dallying on the spot might have meant the shipwreck of the whole fleet — they were summarily indicted, tried, sentenced to death, and executed, despite the fact that such summary proceedings were unconstitutional,

as Socrates courageously pointed out to the jury. This whole outrage was the work of some sycophants and overzealous patrioteers.

But otherwise inconspicuous and harmless private citizens, too, felt the effects of sycophancy which seems to have been at its worst toward the end of the fifth century. Thus Charmides, according to testimony of Xenophon, once insisted that one of the things that reconciled him to his poverty was the fact that he had no longer to live in constant fear of sycophants. The wealthy Nicias was so afraid of sycophants that he avoided all public appearance, while his brother Diognetus was so hounded by them that he went into voluntary exile.

Sycophants were always willing to put their sordid services at the disposal of others for hire. On occasion they might even act as advocates, especially for the purpose of filing some trumpery countersuit against their client's opponent. Thus Meidias, in his effort to discredit Demosthenes, his antagonist, hired the notorious sycophant Euctemon to charge Demosthenes with military desertion. And when some officials were indicted for having embezzled public funds, they retained Philocrates, likewise a professional sycophant, who recklessly charged the prosecutor with homicide in order to prevent him from prosecuting these officials. For any person charged with homicide was considered "polluted" and, hence, was debarred from appearing in court.

The fact that Athenian procedure, both civil and criminal, was singularly devoid of "legal technicalities," actually played into the hands of the sycophant. The laymen who made up the Athenian jury wished to be entertained by an exciting spectacle; they did not care very much whether they were listening to an honest trial or to trumpery charges brought by sycophants, as long as the proceedings promised to be amusing. In addition, they nearly always insisted that the whole issue be threshed out in a single day, even when the very

lives of people were at stake. In this they acted very much like the average reader of a fascinating mystery story who is impatient to know the outcome of the plot. Any attempt to delay the trial, in order to gather evidence or to expose sycophancy, for instance, met with resolute resistance and profound suspicion. This made it practically impossible to have the case continued until unfavorable public sentiment, often aroused on purpose by some sycophant, had subsided. The Athenian jury, it seems, considered dilatory tactics an admission of guilt.

## X

Only after about the middle of the fourth century B.C., when Greece had lost much of its intellectual originality, did the retaining of a professional lawyer become a common and unchallenged practice. People at last began to realize the many advantages of having a professional, an experienced and skillful lawyer handle their legal affairs, both in and out of court. Once this was understood and appreciated, litigants also began to discard the ridiculous pretense or fiction that the lawyer they engaged was a relative, friend, or close associate.

Before long private individuals, especially men of affairs, began to make regular and constant use of the services of professional lawyers in order to protect their interests. Thus Phormio, the banker, sent a lawyer called Stephanus to Chalcidon in Asia Minor to secure the release of a ship in which Phormio had an interest. The banker Pasion retained the lawyer Pythodorus to look after business interests and investments. Two notorious Athenian money lenders sent a lawyer to the island of Cephallenia to protect their interest in a ship stationed there, on which they had lent some money. These practices remind us of the activities of a modern lawyer retained by a bank or insurance company.



Business men at Athens, just as corporations today, often found it extremely advantageous and profitable to retain on a permanent basis one and the same lawyer to keep constant watch over their many and varied business interests. The best known instance of such a policy is that of the permanent employment of the lawyer Archedemus by the rich Crito whose far-flung business affairs had become unmanageable. No less a person than Socrates had recommended Archedemus to the much troubled Crito. On another occasion, according to the report of Xenophon, Socrates had insisted that a man in legal trouble needed not a good friend but a competent lawyer, just as a sick man needs a competent physician rather than expressions of sympathy.

Politicians and political parties, too, soon made a practice of retaining the services of professional lawyers, if only for the purpose of intimidating or ruining their political opponents by hailing them into court on all sorts of trumpety charges of bribery, corruption, misappropriation of state funds, illegal legislation, and other offenses that affected the common life of Athens. This kind of political blackmail greatly flourished, and was extremely effective, during the endless innerpolitical struggles that kept Athens in nearly constant turmoil during the latter part of the fifth and first half of the fourth centuries B.C. Politicians or statesmen, wishing to introduce or sponsor novel legislation or recommend revisions of old laws, likewise made it a habit to employ competent lawyers familiar with the intricacies of Athenian constitutional law to draft the proposed legislation or revision. Since the penalties for suggesting or enacting "illegal" or unconstitutional legislation could be extremely severe, it was deemed advisable first to ascertain through an expert whether these proposals were properly drawn. Lawyers also were frequently retained to introduce a specific law with which a politician or statesman did not wish to be publicly identified on account of its unpopularity or possible unconstitutionality. In such

case the lawyer assumed the risk of being indicted should the proposed law be declared unconstitutional.

## XI

About this time also — during the fourth century B.C. — lawyers, it seems, began to specialize. Demosthenes, in a law suit against his dishonest guardians, is said to have consulted Isaeus who was regarded as the outstanding authority in this type of litigation. Isaeus, otherwise well-known as one of the greatest orators of Greek antiquity, in his forensic work apparently concentrated on what we would call the law of trusts, wills, future interests, or “estate planning.” Later Demosthenes himself seems to have specialized in insurance, admiralty law, property law, and wills, as well as in constitutional law. Particularly in the latter field he exhibited great competence, a thorough knowledge of politics, a great wealth of legal lore, and outstanding ingenuity in legal argument. His chief fault was that occasionally he allowed his zeal as a politician to mar his sense of objectivity and impartiality when dealing with issues of constitutional law. His ability as a constitutional lawyer is demonstrated in his speech against Timocrates.

Public prosecutors or states-attorneys, on the other hand, as a rule reacted unfavorably to the novel practice of having defendants openly represented by professional counsel. Apparently they felt that the lawyer, often in the most successful manner, interposed himself between the frightened and helpless defendant and the frequently vengeful wrath of the all-powerful state which the states-attorney wished to visit upon his chosen victim. They, too, soon realized to their utter dismay how helpful lawyers could be to a defendant on trial. Their hostility was evidenced by the well attested fact that many determined efforts were made to discredit and even to intimidate lawyers for unpopular defendants, as happens even today.

The patent aversion of public prosecutors or states-attorneys to professional lawyers, who in a criminal trial undertook the cause of a defendant, is clearly illustrated by the following incident: Demosthenes, himself a professional lawyer of great fame, while acting as a states-attorney, once vehemently protested against the appearance of a lawyer in behalf of the defendant. He used the rather ridiculous argument that the very presence of a professional lawyer in the people's courts was contrary to the spirit of democracy. It was, Demosthenes insinuated, a clear admission of guilt on the part of the defendant. He moved, therefore, that the court should refuse to listen to any of the arguments or pleas that might be made by this particular lawyer. The motive behind Demosthenes' outrageous conduct should be obvious: by launching these personal attacks he attempted to neutralize or defeat in advance the possible effects which the pleas and arguments of the defendant's lawyer might have on the court. It goes without saying that such an unusual deportment was, as so often with Greek lawyers, psychological rather than legal tactics. And such psychological tactics, repugnant as they may seem, were fully in harmony with the Greek practice of advocacy which, as we shall see presently, was often nothing other than oratory, that is, the "art of psychological persuasion" or a "verbal combat" rather than a "legal contest."

Lycourgus, the "hanging judge" of Athens and himself a lawyer of no mean repute, even suggested that a lawyer who argued the cause of another in a criminal action should himself be put on trial as an accessory. Hyperides, a contemporary of Lycourgus and likewise a celebrated lawyer, countered this remark with the famous statement: "What is more democratic than that those who are able to plead a cause should come to the aid of those who are themselves unable to do so, particularly if the latter are in dire peril?" On another occasion Hyperides exclaimed:

Of the many excellent features that are characteristic of a democracy, which one is more in keeping with the democratic spirit than the custom of allowing anyone who wishes to do so to come to the aid of the inexperienced man whenever the latter is faced by grave dangers against which he is unable to defend himself?

And we have already referred to the remark attributed to Anaximenes that in a true democracy every one helps another to the best of his abilities.

The statements of Hyperides suggest the classical idea, so often and eloquently expressed in the long history of the legal profession, that true advocacy is the protective shield of the defenseless, the timid, and the weak. In the words of Hyperides, the legal profession and its many activities are exhibitions of that spirit of mutual helpfulness which was the very spirit of Athenian democracy. This appeal to the spirit of democracy in action seeks to put the practice of law on a high and noble plane, on a level with the most exalted civic duties, akin to the duty of a man to spring to the defense of his country against any foreign invader. Many years later, Cicero, the great Roman orator and lawyer, expressed essentially the same thought when he maintained: "What is so kingly, so generous, so magnificent, as to bestow help on those who supplicate our aid — to raise the oppressed, save our fellow citizens from peril, and preserve them to the state?" And Tacitus, the great Roman historiographer and renowned lawyer, insisted: ". . . What can be more safe than that [*scil.*, the legal] profession, whereby . . . you will be able to afford protection to your friends, assistance to strangers, and safety to those who are in peril. . . ." The Code of Emperor Justinian echoes these sentiments when it observes that:

If lawyers properly did their part within the state, they were no less the benefactors of mankind than if they risked their very lives in battle to save their country and families from ruin. For armed warriors, whose weapon is the sword, were not the only soldiers of the empire; lawyers, too, fought for imperial Rome when they practiced the glorious gift of advocacy

in defending the lives and fortunes of their fellow citizens, in upholding the cause of the poor and the needy, and in helping people, who had suffered a wrong, to their rights.

## XII

The activities of an Athenian lawyer in court ranged all the way from a careful, though often seriously distorted and highly colored discussion of the facts and a more or less competent analysis of the law in relation to the facts, to mere bombastic oratory and platitudinous, not to say theatrical, appeals to emotion and sentiment. In order to gain the sympathy of the jury, the litigant or defendant in a criminal action, or his lawyer, would often begin by contending that the allegations or charges were a "gross injustice" and "outright lies." Then he would contrast his own lack of rhetorical skill, forensic ability, and court room experience with the cunning and experience of his adversary, who was often referred to as a despicable "professional" or a detestable "sycophant." Thus, in the defense of Helus of Mytilene, Antiphon, who wrote the forensic speech for the defendant, made the latter stress his inexperience in legal proceedings and lack of oratorical fluency, and pray that the court should not be carried away by the eloquence of the prosecution. Wherever possible the litigant would also refer to his poverty, advanced age, or physical infirmities. It is interesting to note here that Socrates, when on trial for his life, emphatically refused to resort to such practices. Having thus established himself as the sorry "under-dog" who trembles before his mighty but vicious antagonist or prosecutor, the litigant would then courageously resolve that, despite this "crushing inequality of odds," he would join the issue, knowing that the "righteousness of his cause" would ultimately triumph, particularly since the "enlightened" and "fair gentlemen of the jury" could not possibly fail to see the "obvious justice" of his case.

Where the lawyer had personal knowledge of the circumstances and the facts underlying the case at bar, his actions

often closely resembled those of a witness giving long and detailed oral testimony. Such detailed statements, frequently colored and even distorted so as to favor the client, were extremely effective, especially if they were emphasized by the showmanship, personality, and rhetorical skill of an experienced and clever lawyer. Needless to say, the lawyer also bore witness to the excellent and unrivalled character of his client, whose angelic disposition was then contrasted at length with the diabolical depravity and viciousness of the opponent or the opponent's lawyer. In addition, whenever possible, he would parade before the court a long line of alleged friends or associates of his client, marshalled from the ranks of the most important men in the City, who were intended not so much to help in ascertaining the truth of some alleged fact or facts, but rather to impress on the court the idea that a man who had so many and such excellent friends could not possibly be a malefactor.

In the light of the peculiar procedural practices in ancient Athens, it was vitally important to be able to anticipate the arguments that would be advanced by the other side. The outcome of a legal contest frequently depended upon correctly predicting an opponent's moves, something which only an astute and experienced lawyer could do. In most cases very little, if any, evidence was disclosed by either side in advance of trial. Hence, the litigant or his lawyer was often completely in the dark concerning the plans and intentions of his opponent. But there existed many unofficial ways of securing this vital information. For the most part lawyers were retained for this purpose. Athenians, on the whole, were loquacious and extremely indiscreet people, and an alert lawyer, if he put his mind to it, had no trouble in collecting all sorts of information concerning the intentions of the opposing party, either from the opposing lawyer himself, who apparently did not believe in professional secrecy or would fall prey to the temptation of a handsome bribe; or from the

indiscreet litigant himself; or from the chatty friends of the litigant. And, as might be expected, a litigant's personal enemies were always willing and eager to help the other side by divulging damaging information or gossip. Even intimate friends of the litigant did this on occasion, when induced by the prospect of some material gain.

The legal ethics of that time, as we shall see later, did not prevent a lawyer from betraying his client to his adversary. This may explain why we find in some forensic speeches the following significant remark: "I understand that my opponent proposes to allege the following." Such a statement might have been made on the basis of some true information acquired in a manner just described. But it did not always mean that the actual intentions of the opponent were known; for it was often nothing more than what today is called a "fishing expedition." Anticipation of the arguments that might possibly be used by an opponent was often taught in the schools of rhetoric. It was considered a neat little trick in that it gave the person who alleged such foreknowledge the psychological advantage of bringing such matters to the attention of the jury first, thus taking in advance some wind out of the sails of his opponent. The Athenian jury was probably impressed by the clairvoyant cleverness of the litigant or his lawyer and, hence, was favorably inclined toward him. If the opponent did not in fact use the anticipated argument, nothing was lost after all. Indeed, anticipatory refutation might be so successful that it would frighten the opponent out of using an otherwise effective argument.

### XIII

Whenever an Athenian lawyer or advocate appeared in court, how much attention did he pay to existing laws, decrees, statutes and previous court decisions? The general aversion to professional lawyers, as has already been mentioned, prevented him from being recognized as an expert on the law and from being permitted to speak with authority to

the court on any point of law, although rare exceptions to this general rule have been recorded. In consequence, the average lawyer was most reluctant to display his knowledge of the law, provided he had any, lest he be suspected of being a professional. For in Athens, where professionals were heartily distrusted, such a suspicion could seriously prejudice his case. Hence a lawyer always wished to appear as a plain, ordinary citizen, in no way superior in knowledge or skill to his audience. As a result of all this, whenever he would have to refer to some legal provision, he often would deprecate and even apologize for his apparent knowledge of the law.

To complicate matters still further, each Athenian court was supreme; it could interpret, apply, or ignore the law as it saw fit. In addition, some laws were not only ambiguous, but outright contradictory. Such a situation, to be sure, offered the clever lawyer ample — perhaps too ample — opportunity to twist the law to his advantage by ingenious interpretation and adroit analogy. All Athenian laws, following an old custom dating back to the seventh century B.C., were published, that is, publicly exhibited, thus enabling every Athenian to familiarize himself with them. Also, in the many and varied processes which made up the Athenian democracy of the fifth and fourth centuries B.C., a great many Athenian citizens actively participated in the multifarious business of government. As a result of all this, the average Athenian had some acquaintance with certain aspects of the law. But this “chance familiarity” with the law, acquired in a rather casual manner, could not possibly be adequate for those who made the law their profession. And, as we shall see later, there seems to have been no such thing as a systematic training in the law either for lawyers, magistrates, or judicial officers.

When citing a law, decree, or statute in court, an Athenian lawyer usually quoted it in his own words, omitting or de-emphasizing whatever was not in his favor. Aristotle gives some interesting advice concerning such practices: he sug-



gests that whenever the positive law, that is, the written or enacted law, is unfavorable to a cause, the clever lawyer should appeal to the natural law, that is, to the unwritten law, and vice versa. Frequently an Athenian lawyer would simply presuppose a knowledge of the law on the part of the court or the jury, or in a most general and nonchalant manner would refer to some of its provisions. Even if he recited a law verbatim, a not too frequent occurrence, there is no evidence that he took pains to be accurate or that he quoted from an official text. In sum, Athenian lawyers allowed themselves much latitude in the way of omission, transposition, and interpretation. The Athenian courts, it seems, acquiesced in such practices, although outright falsification of the law could be severely punished.

In accordance with our Anglo-American tradition, law is found not only in legislative enactments, but also in the past decisions of the courts. Athenian courts, however, were not bound by precedent. Consequently, Athenian lawyers and students of law saw little need to familiarize themselves with what is called case law. Even Athenian courts, despite the fact that as a rule they refused to follow any definite jurisprudence, were impressed by a famous previous decision — although they were at liberty completely to ignore it. Accordingly, it was considered good courtroom strategy occasionally to cite some famous precedent. Thus Aristotle, in his advice to forensic orators, highly recommends occasional reference to cases and decisions likely to be familiar to the jury, especially to decisions previously handed down by the same jury. The obvious purpose of such citations was to play up to the jury's vanity. Hence it may be contended that the use of precedent in ancient Athens was not so much a matter of legal argument as it was a psychological device. It was, indeed, a form of flattery meant to put the jury in a favorable frame of mind, a purpose sedulously cultivated by every successful Athenian lawyer.

XIV

It was not uncommon for an Athenian lawyer to rely on mere emotional appeals. In order to arouse compassion he would parade the defendant before the jury, dressed in rags, uncombed, unshaved, and haggard — the abject picture of a man who had suffered the punishment of exile. He would bring into court the defendant's weeping wife, dressed like a mourning widow, and his wailing children who would cling to their father — an effective way of warding off a possible capital sentence. All these heart-rending theatrics, of course, had been carefully rehearsed in advance. It will be noted that Socrates, when on trial for his life, strongly objected to such practices which he declared incompatible with the dignity of an Athenian court. In his defense of Phryne, a notorious courtesan, against the charge of "impiety," Hyperides resorted to a novel, though no less effective device. Despite all his endeavors, the case seemed to be going against his client. Then, at the crucial moment, he suddenly stripped off her garment. Deafening applause followed and Phryne was acquitted.

Such courtroom antics repulsive as they were, had a definite, not to say decisive, purpose in ancient Athens. The real power of the absolutely sovereign Athenian people lay not in the popular assembly, but in the popular courts. There the average Athenian citizen constantly was showered with compliment after compliment, and abject adulation was rained upon him so incessantly that his exceptionally susceptible imagination soon began to believe what his flatterers told him, namely, that he was a god. And in a sense a god he was, for the spoiled and fickle will of the sovereign people of Athens, though it was really as irresponsible as its decrees were irreversible, knew no restraints and no discipline. If ever there was a despotism complete in itself, it was certainly this radical democracy as it existed in Athens during the latter part of the fifth and most of the fourth century B.C. Even in their best of moods the Athenians came to the judicial assembly—and this

is the only appropriate term to describe a jury composed of between five hundred and six thousand jurors—with a disposition too much like that with which they took their seats at the theater when they settled down to compare, discuss, and judge the literary and dramatic merits of the compositions submitted by rival poets. Hence it was the prime task of a lawyer who strove for success to entertain properly his large audience, and to gain a favorable verdict by using the same means a public entertainer would employ.

Merely to entertain and thereby to gain the favor of the Athenian mass juries was, however, not the sole purpose or motive of the Athenian lawyer. The sovereign people of Athens were not only supreme judge but, in keeping with their absolute sovereignty, they also had the sole right to pardon a man after having condemned him. The Athenians could not see the basic differences that distinguish a court of justice from a board of pardon. Hence the function of judging and pardoning were often practiced together without hesitation. In consequence, it was of the utmost importance for the lawyer or litigant to work upon the feelings and to arouse and enlist the sympathies of the jury. This is the real reason why we find so many piteous appeals to compassion, and why such touching pictures were drawn of the miseries which a conviction would produce. This is also the reason why a lawyer, who once had served the City well or who had distinguished himself in war, would not hesitate to ask for a favorable verdict for his client as a public recognition of his own services to the state. Such appeals, in the final analysis, were actually pleas for a pardon rather than for a verdict. For only the sovereign but, at the same time, extremely emotional people of Athens, assembled in these mass juries, if swayed by astutely planned and expertly executed dramatics, could grant a pardon.

Part of the dramatic appeals to the jury was also the frequent use of platitudinous and sonorous commonplaces, such

as "the majesty of the law," "the preservation of our cherished democratic institutions," "the sanctity of agreements," and the like. As a matter of fact, students of the law (and rhetoric) were especially trained in the use of such phrases. They also memorized and at times recited long as well as irrelevant passages from the most renowned poets of old, such as Homer, Hesiod, Pindar, Theognis. For it was long remembered that a citation from Homer's *Iliad* once in an international dispute between Megara and Athens had led to the award of the island of Salamis to Athens.

## XV

What, then, were the duties of an Athenian lawyer toward his client? It seems there was no such thing as professional ethics among lawyers, and, as has already been shown, that they did not recognize any obligation of professional secrecy. The average lawyer apparently did not hesitate to betray his client or to divulge confidential information. The plaintiff Epichares, for instance, complained to the court that he had "been betrayed by certain persons." After they had promised him to handle his case faithfully, he had fully trusted them by giving them confidential information. But "they had gone over to the other side and passed on all the information to the opponent." What action was taken in this serious breach of trust is unknown; it is most doubtful that any action was taken at all. Epichares, we must assume, made this complaint not so much to obtain disciplinary action against his former lawyers, but in order to work upon the sympathies of the jury which, he hoped, would side with the victim of this crude betrayal and give him a favorable verdict. Then there is the case of a man called Apollodorus who charged a confidant, presumably his lawyer, with having disclosed his whole case to the other side. And Theocrines openly referred to the desertion of his "legal advisor" and "friend." Demosthenes, who was a lawyer himself, apparently had so little respect for

the duties of his profession that, in advance of trial, he would disclose to the opponents the brief and the arguments he had prepared for his client. As a matter of fact, Demosthenes was once charged with having advised both plaintiff and defendant in one and the same case. The legal ethics of that early time apparently did not prevent a lawyer from betraying outright the secrets of his client.

One of the most reprehensible practices engaged in by the Athenian lawyers was the bribing of juries and witnesses. Of course, this cost a considerable sum of money, the more so, since at Athens the ordinary jury never consisted of less than five hundred jurors. A witness who perjured himself for the sake of a bribe, even if the perjury was detected, ran little risk of being criminally prosecuted. But the general disgrace which attended perjury was used as a pretext by the bribed perjurer to demand considerable compensation for his services. The fixing and bribing, both of juries and witnesses, was usually done by lawyers, who probably charged an exorbitant fee for this sort of "legal service." In one notorious case bribed witnesses testified under oath to the death of a certain woman who was forthwith produced in court very much alive and in an excellent state of health. From all this it would appear that Athenian lawyers for the most part did not hesitate to stoop to the most unethical practices in order to gain either a favorable verdict or some substantial remuneration.

Another reprehensible but effective tactic occasionally employed by an Athenian lawyer was recklessly to indict the opponent of all sorts of crimes in order to discredit him in the eyes of the court. For this particular purpose the services of a professional sycophant were invaluable. Aristogiton, for instance, brought seven indictments against Demosthenes for alleged illegal legislation; and Aristophon, a prominent politician of the early fourth century B.C., was indicted no less than seventy-five times for the same crime. Particularly effec-

tive were indictments for homicide which, as has already been shown, had the effect of proclaiming a man defiled and, hence, debarred from appearing in court. Equally disastrous could be charges of military desertion or "draft evasion" which were well calculated to arouse hostile public sentiment in which the jury would share. Another way of effectively discrediting a person was the constant abuse of impeachment proceedings. In early days such proceedings were brought only against persons who in some official capacity had been guilty of serious neglect of duty. But soon it became a generally accepted policy to impeach before the assembly any and every citizen for all sorts of alleged crimes rather than indict them before a regular court of law. Thus, during the latter part of the fourth century B.C., a client of Hyperides complains:

Impeachment has hitherto been employed against people . . . who were charged with betraying ships which they commanded . . . with betraying cities, or . . . with giving bad advice to the people. . . . The present state of affairs is simply ridiculous: people . . . are impeached for hiring flute-players at a higher price than the law allows . . . and Euxenippus is impeached on account of the dream which he says he dreamed.

Widespread use of slanderous invective and personal abuse of the opponent also seems to have been an important feature of Athenian legal practice. The Homeric capacity and proclivity for insulting language is well known: Agamemnon, the "king of the host," is publicly reviled as a "sot," a person "with the face of a dog and the heart of a deer," who is "clothed in shamelessness." And what was good for Homer was certainly good for every Greek. Greek comedy, which came into its own during the latter part of the fifth century, when it gained great popularity, likewise made frequent use of vile and vicious language. And since the Athenian trial frequently was something of a dramatic show, with the litigants and their lawyers as adroit actors and the large juries as appreciative audiences, it is not at all surprising that the use of the ever popular invective should be carried over into

serious litigation before the Athenian courts. It is well-nigh inconceivable that any man of character should meekly submit to such public insults and still retain the respect of his fellow-citizens, not to mention his own self-respect. Although long ago Solon had forbidden the utterance of slanderous words in temples, law courts, and public offices, this law was flagrantly ignored.

In open court Demosthenes, for instance, called Meidias a "cur," a "rogue," a "wretch," a "villain," a "blackguard," a "bully," a "miscreant," and a "coward." And some of the verbal exchanges between Demosthenes and Aeschines defy description. Demosthenes furnished the explanation for this deplorable practice when he remarked that the Athenian court or, to be more exact, the large juries of the heliastic courts, enjoy listening to abusive language and vile expression. After all, the pleasure of the all-powerful and extremely fickle Athenian jury was decisive. Hence many of the forensic speeches of Greek lawyers abound with a virulence of abuse. Disgraceful epithets were passed back and forth with boring lavishness, while the audience, the jury, probably rolled in their seats with laughter, applauding a particularly nasty, but clever insult, and constantly calling for more of the same. Such reactions on the part of the jury, akin to the effect which a particularly brutal boxing match has upon an inflamed mob-audience, compelled the lawyer, who wished for a favorable verdict, to stoop to practices which today all abhor or should abhor. In sum, certain clever and not too scrupulous lawyers made it a practice to play on the highly emotional mentality of the Athenian populace. In order to arouse public sentiment in favor of their client, they employed methods and tactics which later generations of lawyers rejected as incompatible with the duties and ethical standards of the legal profession.

Antiphon, perhaps the most outstanding lawyer and forensic speech-writer of his day, on the other hand seems to have displayed remarkable restraint and great dignity. In any

event, it appears that he refused to employ invective and scurrilous language. This praiseworthy attitude of Antiphon could have been one of the reasons why he was so unpopular and the object of so much suspicion. Since in his aristocratic bearing he would not pander to the tastes of the masses, he was considered an "enemy of the people," an "opponent of democracy," and a "despiser of the common man," whom he refused to entertain by buffoonery and vulgarity.

## XVI

In passing, a few words may be added about legal education in ancient Athens. From the scanty records it appears that it was probably part of the training in general oratory which, as has already been shown, was subdivided into epideictic, deliberative, and forensic oratory. Corax of Syracuse had stipulated that a good forensic speech should contain: first, a general introduction of the case at bar in which the speaker seeks to gain the attention and good will of the court; second, a main or argumentative part which also contains the evidence; and, third, a summation which contains a brief review of the whole case and the main arguments as well as an appeal to the court. Students were expected strictly to follow this general pattern which, it seems, was taught in all schools of rhetoric. Pupils were also trained to learn how to speak *ex tempore* in the law courts as well as in the popular assembly. For did not Alcidamas insist that in order to be a successful lawyer "a man must be able to speak extemporaneously and appropriately to the occasion, be quick in every argument, and not be at loss for the proper word"? The schools of rhetoric, which, in a certain way, took the place of our modern law schools, often made the ridiculous claim that they could teach any man, willing to pay a high price, the art of refuting or sustaining any and every possible legal argument. Hyperbolus, a prominent lawyer and shifty statesman, is said to have paid a tuition fee of one whole talent in order to learn



every known legal evasion, argument, counter-argument, and form of legal action—a cheap price for such legal omniscience.

But of systematic instruction in the law little or nothing is recorded. A certain knowledge of the law on the part of the student of rhetoric seems to be assumed in some of the ancient treatises on rhetoric, but we do not know exactly how this knowledge was acquired. It has already been pointed out that, since all Athenian law were publicly exhibited, every Athenian had an opportunity to familiarize himself with them. In addition, a great many citizens actively participated in the administration of democratic Athens, thus acquiring some familiarity with certain aspects of the law. It is also quite possible that there existed some sort of compilation of Athenian laws and statutes, suitably arranged for study and reference. But there is no evidence of such a collection prior to the end of the fourth century B.C. On the other hand, it was also claimed by not a few contemporary observers that if a man mastered the art of oratory, he could very well dispense with a knowledge of the law. Owing to the kind of jury the Athenian lawyer had to face, this advice no doubt had some practical merit. Such contempt for the more technical or professional aspects of the law was fostered by the fact that at Athens forensic work was not so much legal work, in the modern sense of the term, as the art of persuasion and eloquent appeal to emotions; it was not an appeal to the analytical mind of the jurists, but rather to the compassions of an emotional and vascillating multitude, which could easily be alienated by references to law and legal technicalities.

### *Conclusion*

In conclusion the following observations may be made: In the light of the surviving and often tainted evidence it is not always an easy task to form an adequate opinion of the Athenian legal profession and its effectiveness. The peculiar judicial system of Athens was not conducive to either an effi-

cient administration of justice, or the development of a distinct class of professional lawyers, or the observance of high professional standards. The forensic activities — nay, the whole conduct of the average Athenian lawyer — are ample proof of the fact that a large assembly of people, which is always susceptible to all sorts of extraneous influences and liable to be swayed by passion and agitation, can rarely if ever constitute a competent tribunal. Its conclusions, among other things, frequently failed to discern between law and fact, fact and fiction; and, furthermore, the reasons for many of its emotional decisions were often known not even to itself. And since its decisions, such as they were, did not bind either itself or any other court, there could be little or no development of law and legal practice.

In consequence, the shrewd and successful lawyer wishing to win a favorable verdict was actually compelled to resort to appeals to political prejudices, violent passions, flagrant misrepresentations of the law, galling invectives, and sophistries of the worst sort. To make matters worse, for a long period of time democratic Athens displayed a marked distrust of professional lawyers and a definite aversion to all forms of expertness — an attitude which, incidentally, became manifest in a statute forbidding the payment of fees to lawyers. This unfortunate mistrust, it seems, had its root in the belief, shared by the democratic people of Athens, that any form of professionalism, like expertness, was undemocratic in that by his expertness a man became part of an exclusive élite and, hence, set himself apart from the democratic community. Display of legal or technical competence nearly always excited the suspicion of the popular courts.

Had the Athenian lawyer — and many extremely capable men were members of the Athenian legal profession — been permitted to speak in court freely, competently, and authoritatively about matters of law, procedure, and the proper application of the law to a given set of facts; in sum, had

Athens promoted rather than impeded the growth of a true legal profession and allowed it to rise to real excellence in legal achievement and prominence in social position by giving it the full recognition it so richly deserved, Athens might have developed a class of lawyer-jurists quite comparable both in fame and attainment to the great Roman *jurisconsults* and advocates. The nearly superstitious aversion to any kind of professional expertness, skill, and knowlege, and the subsequent stipulation that a lawyer could not receive any remuneration for his services and efforts, in fact reduced, not to say degraded, the Athenian lawyer for a long and perhaps decisive period in the history of Western civilization to playing an extremely restricted and even inferior and despised role in the social, political, and intellectual life of an otherwise great city.

This deplorable and unnecessary situation had catastrophic consequences of far-reaching effect: it deprived Greece of every chance of becoming the great and lasting lawgiver of Western mankind and, thereby, to change the whole course of Western civilization. This failure is the more regrettable since the Greek people, as their philosophical and esthetic achievements have so clearly shown, were by nature and disposition eminently qualified and perhaps even destined to approach the complex and thorny problems of the law with unrivaled intelligence, sublime understanding of the essential, and unsurpassed acumen. At this point one may give rein to the imagination and ponder over the problem of what might have happened if during their truly creative period the Greeks had competently tackled law from the point of view of the expert lawyer-jurist. Unlike the unimaginative and sober Romans, who saw in law primarily a highly technical administration of certain aspects of human relations, the Greeks, true to their proclivity for real profundity, ultimate synthesis, and with their greater intellectual vision, fully understood and intelligently avoided, at least in their philosophical discussions, the

dangers inherent in that vexing and never again fully resolved "dualism" of law and morals. To them law and morals, private morality and social ethics were essentially one and the same thing; the law-abiding citizen was the morally virtuous man who in all his actions deported himself as the thoughtful member of a greater community, fully conscious of the essential identity of law, morals, and the common good.

It is indeed sad for the lawyer and moralist, for the historian and philosopher, to reflect upon the possibility of a more satisfactory and more satisfying jurisprudence that might have resulted for the whole of the Western world if the Greeks, and not the Romans, had attained to that special grandeur in legal achievement which forever will be connected with Roman law. It is even sadder to reflect upon the fact that it was mere silly prejudice and untimely pettiness which prevented the Greeks, a people so fortuitously endowed by nature and so uniquely placed in such choice circumstances, from becoming the immortal lawyer-jurists they were actually destined to be. But such are the real tragedies of history.

*Anton-Hermann Chroust\**

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\* Professor of Law, University of Notre Dame.