

Chapter Seven

ROME AND ITS LAW

The last chapter examined classical Greece in connection with the origin of Western philosophy, natural science, classical art, citizenship, and democracy. This chapter treats the Roman culture that arose in the aftermath of classical Greek city state. It highlights Stoicism, the most influential philosophy of pre-Christian Rome among its governing classes. The Stoics appear among the first philosophers to affirm universal natural rights. Every human being as a right to think freely, since by human nature a human being, a thinking being, can do nothing else.

The first three sections deal with Roman law and its philosophical basis. Sections Four and Five treat Stoicism, and in particular its belief that the past operates by *natural laws* to make the future inalterable. Section Six relates the Roman religion to the modern ethics of "utilitarianism."

1. *The Unity of Graeco-Roman Civilization*

Recent philosophers known as *structuralists* suggest that the identity of a civilization lies in some *structure* which reproduces itself in different institutions and spheres of culture. This idea seems true of Graeco-Roman civilization as a whole. Its deepest root is a single structure expressed in spheres as different as early Greek mythology and as late as the legal codes of the late Roman Emperor Justinian (483-565 A.D.). This structure is too rich to be expressed in a single word. It may be termed *justice, moderation, harmony, balance, measure, proportion, limitation, destiny, and necessity*. It is the idea of a proportion which remains constant despite endless changes in the terms—much as water survives varying quantities of oxygen or hydrogen. It is opposed to the grandiose splendor of the East, in which one term of the proportion, the God of Hindu pantheism or Hebrew theism (creationism), grows to infinity and escapes dependence of the other term of the ratio.

This structure makes its first appearance in the aristocratic and non-despotic institutions of ancient Greek politics. These institutions aim at balance by assigning limits to the part played by every participant in political life. We see a reflection of such institutions in the *aristocratic society* of Olympian gods. Greek philosophy, beginning with Pythagoras' concept of the cosmos as a scale of non-artificial *proportions*, centers around the same value. (Modern natural science has merely developed this concept with chemical and physical ratios such as H_2O and $e=mc^2$.) Plato and Aristotle believe that the *happiness of a society* depends on a balance between classes, just as *individual happiness* depends on harmonious development of the different parts of human nature. *Virtue*, for Aristotle, means the avoidance of extremes, a happy medium between excess and deficiency. The Hebrews held that divinity required the absence of all limitation. The Greeks, on the contrary, believed that perfection required limitation and definiteness. What was infinite or indefinite was unfinished and imperfect. The Greek *temple*, with its proportion and moderate size, contrasts to the colossal architecture of the Orient. The human beauty revealed in classical sculpture depends on a mathematical proportion of

bodily members.

The highest artistic expression of the Greek value system was attained in classical *tragedy*. Tragedy revealed the futility of overstepping the roles which destiny assigned to individuals and institutions by absolutizing a finite value. The highest institutional expression of the same values is found in Roman *justice* and its quest for a regular procedure for "assigning to each his due." Roman law shows the influence of the Greek theater. The term used by the Romans to designate participants in legal proceedings—the term "persons"—is derived from Greek theater. Etymologically a "person" is a theatrical mask. In Latin usage, a person played a role in the theater of legal conflict. Originally, a person was a theatrical mask. With the Romans it came to mean the role played by the actor. (With us today it has come to mean the role-taker.)

The phrase "Graeco-Roman civilization" suggests a close relation between the Greeks and Romans. Both peoples were aristocratic. Early Roman kings differed from Oriental despots. They respected the rights of the family patriarch over wife, children, and slaves. Abolition of the monarchy in the sixth century B.C. reinforced aristocracy. It increased the power of prominent senatorial families. Gradually, however, political participation in the republic became more democratic. The common people acquired limited rights of representation.

2. *Citizenship in Rome*

After the fall of the Roman *Republic* and the founding of the *Empire* (27 B.C.), the political participation of all groups suffered a decline. Participation in legislation and meaningful elections disappeared under the empire. But the idea of citizenship did not disappear. The Roman imperial administration exercised a right to mediate in domestic conflicts. This was not because all Romans were treated as children but because all, including women, children, and slaves, were granted certain rights of adults. More and more Romans were paradoxically granted citizenship despite being politically passive. They were not mere subjects in the personal domain of the emperor.

Citizenship is a Graeco-Roman idea. It has two aspects: the right of participation in political decision-making, and the right to legal protection of one's private interests (for example, property). Citizenship thus entails both *public rights* and *private rights*. Public rights are those of political participation in voting, holding office, etc. Private rights are rights to state protection of persons and property. Although public rights declined under the Empire, private rights were extended to ever broader groups. Under the Republic, the private right to initiate legal proceedings in the defense of one's interests was reserved to the male head of the household. Such a right was denied to members of his family and household, as well as to foreigners. The Roman father held a power of life and death over his family which was legally limitless, despite the influence of public opinion. Gradually, through the evolution of both the Republic and the Empire, legal restrictions were placed on this domestic despotism. Sons were emancipated from their still living fathers. They were granted the right to own property independently of the father. Wives were eventually granted similar rights. Debtors were granted certain safeguards against their creditors. Private rights were extended to foreigners residing in Rome. Artificial extensions of traditional Roman law (useful legal fictions) were introduced by legal administrators (*praetors*) to permit non-Romans to benefit from the same legal protection enjoyed by Roman citizens. Roman citizenship was extended to an increasing number of non-Roman inhabitants of the empire. In 212 A.D. citizenship was extended to all inhabitants of the empire except slaves. But

even slaves began to find protection under the law. Many were emancipated; others gained the right to buy their liberty with savings (*peculium*). The legal codes of Justinian (528 A.D.) specified that slavery, though a common human institution, was in contradiction to natural law.

3. *Roman Law*

It is hard for us to reconcile the extension of private rights in Rome with the decline of political rights. In the modern view, the control which the citizenry has over government by free elections helps guarantee that the state will respect the private rights of its citizens. That private rights were protected in the Empire without such control seems surprising. The Roman system of extended private rights without public rights was made possible first by the requirements of the commercial revolution throughout the Mediterranean world. Merchants would not go to Rome if their property was not protected. But it was also facilitated by the largely unchallenged authority of the tradition of Stoic philosophy.

The commercial revolution reduced the power of Rome's aristocracy. The initiative of sons in business required emancipation from their fathers. Trade between Romans and non-Romans required the extension of legal rights to the latter. The extension of citizenship to all inhabitants of the Empire seems to have been partly motivated by fiscal reasons.

However, the extension of private rights was also promoted by humanistic, cosmopolitan Stoic philosophy. This philosophy was based on an appeal to reason and unchanging *natural law* rather than tradition or local historical practice. Stoicism was strictly *panentheistic* rather than pantheistic in its theology. God was the cosmos understood as including individual human microcosms.

4. *Stoicism and Determinism*

Stoicism was also deterministic. Determinism may be explained as the denial of a certain kind of freedom. We must be very careful here because "freedom" has several senses. Philosophers have divided these senses into positive and negative senses. *Positive freedoms* are explained as freedoms *to* do something or other, while *negative freedoms* are freedoms *from* something or other.

Two negative freedoms are the *freedom from restraint* and the *freedom from compulsion*. Freedom from restraint is freedom from external forces which would *prevent* you from doing what you choose. Freedom from compulsion is freedom from forces which make you do something even if you do not choose. You have a kind of freedom from restraint if no jail bars hold back your movements. You have freedom from a certain compulsion if no one stronger than you *makes* you pull the trigger though you would not wish to do so.

It is clear that compulsions as well as restraints may be internal as well as external. A kleptomaniac may be compelled by an *internal impulse* to steal, while most everybody is restrained by *inner inhibitions* from doing a variety of things.

A third negative freedom is freedom from complete determination by past causes. This is popularly known as *free will*. It means that your action is in part up to your choice. It means that given the prior situation which you encountered, you could have done something else. It implies freedom from complete causal determination by the past. This is the only sense of "freedom" in which freedom is

incompatible with *determinism*. Determinism allows free-falling bodies whose motion is unrestrained by other objects. It also allows causally determined action which is not compelled by forces external to the agent. (You can be caused by your nationality to believe certain things without being compelled, since your nationality is internal to you, and since you can only be compelled by forces outside you.)

Most people want to believe they have free will because they assume free will supports their *moral responsibility* for their own actions. There is reason for doubting this assumption, however. To the extent that you have free will, your act of will or choice is not causally determined by *you*. Hence you are not responsible for it. If we had unlimited free will, we would not perform our actions; rather, they would happen to us, strike us out of the blue. And we could never know what we would do next! This would surely be a freedom to be afraid of. If we do have free will, we must find security in the thought that it is severely limited. Even if determinism, the *principle of universal causation* is false, the causal influence of the past may remain very great.

Even if the causal influence of the past gives assurance that our actions on the whole will probably not be erratic, but the influence of the past may not be so complete as to eliminate all moral responsibility for our actions. The causal influence of the past ultimately means the causal influence of events before we were born, over which we have no control. Acceptance of the doctrine of moral responsibility is necessary to organized society with its institutions of *praise* and *blame*, *punishment* and *reward*, in which persons accept responsibility for their actions. We are tempted to justify teaching people to accept moral responsibility for their actions because the practical benefits the belief even if we cannot prove the belief *theoretically*.

Most people believe that free will is necessary to moral responsibility. However, non-determinism means that your free will choice is not completely caused, and so it cannot be completely caused by you. And if it is not completely caused by you, you cannot be completely responsible for it. Either determinism is true and everything is caused or non-determinism is true (which makes human free will possible). There is no third possibility. But either way there is a problem for human moral responsibility. Determinism makes it impossible. But to the extent that we have free will, our choices are undetermined by us, so that again we have no responsibility for them. The solution is to see that our choices are not entirely free will choices. To some extent your values, personality, and principles determine your choices, and that is the extent to which you are responsible directly responsible for them. (Yet your parents may be indirectly and ultimately responsible for your values.) But non-determinism means that to some extent the details of your actions may be random, and to that extent you are not responsible.

I am presenting will is compatible with limited causation. If you have taken five cups of coffee, a free will act of going to sleep is causally excluded. If you have taken sleeping pills, a free will act of staying awake is causally excluded. But if you have taken neither coffee nor sleeping pills, a free will choice of either staying awake another five minutes or going asleep is sometimes possible.

We may now mention two positive senses of "freedom" to contrast with the three negative senses above. The first is the *freedom to do what you choose to do*. This freedom illustrates rather than violates causality. Your choice is a cause, and your action is its effect. You have this positive freedom only if you have the first two negative freedoms: nothing is restraining you from the action, and nothing other than your choice is forcing it on you. Most of us would grant that we have the freedom to

do what we choose within limits. You are free to jump two inches if you choose. You are free to do so by choice. Nothing prevents you from doing so, and nothing compels you to do so. But you have no freedom of choice to jump over the moon.

Finally, it is possible to have freedom to do what one chooses without being free in one remaining sense. What if your choice causes your action, but your choice is in turn caused by hypnotic suggestion or subliminal advertising? The ultimate freedom you would lack would then be the freedom to choose on the basis of a conscious and rational appreciation of the *evidence* relevant to justifying your choice. What you would then lack what is sometimes called *rational freedom*.

We have explained determinism above as excluding free will. Another way of explaining determinism or the denial of free will is as follows. Suppose you had your life to live again in the same past situations in which you lived it the first time. The repetition of those same situations would cause you to act the second time around exactly as you acted the first time. Still, another way to assert determinism is to consider a *super-scientist* who knows the complete state of the universe at a given time and all the laws of cause and effect. If determinism is true, that super scientist could predict with complete accuracy the entire future history of the universe after that time:

We ought, then, to regard the present state of the universe as the effect of its antecedent state and the cause of the state to follow. An intelligence, who for a given instant should be acquainted with all the forces [universal causal laws] by which Nature is animated and with the several positions of the entities composing it, if [assuming] further his intellect were vast enough to submit those data to analysis, would include in one and the same formula [embracing complete analysis of some antecedent state of the universe plus knowledge of the "force" or "law" of gravity and all other natural causal forces and laws] the movements of the largest bodies of the universe and those of the lightest atom. Nothing would be uncertain for him; the future as well as the past would be open to his eyes. (Pierre Laplace)

Determinism is the view that universal laws of cause and effect determine whatever happens. A simple causal law might be: the rise of empire in Roman destroyed the Roman Republic. The rise of empire in Revolutionary France destroyed the French Republic.... Therefore, the rise of empire always destroys a republic. Thus Rome and France are considered to be *historical parallels* to the United States: America is currently seeing the rise of empire; therefore, the American Republic will be destroyed. What seems wrong with this reasoning is that to be an empire generally is also to be an empire in particular, and the particulars may change in a way that prevents the destruction of the republic. Thus the simple law in question may be too general, but some other more complicated causal law may hold.

I shall now argue against determinism. It seems to me that it contains a false assumption, namely, that an event can be completely described in some *finite description*. According to determinism, future events are determined insofar as they fall under the descriptions contained in *causal laws*. These descriptions cannot be unending. But if the laws of causation necessary to explain an event were unending, no event could ever be fully intelligible to us. No one can fully understand an infinite number of causal laws. Let us take an example. A *fire* of a certain limited description is caused by a certain combination of *combustible material, oxygen, and friction or heat*. But the finite description under which any fire is predicted does not exhaust the full nature of that fire. In fact, every concrete fire is an individual and unique event, open to endless description. By contrast, any description of an event by a limited number of attributes is open to different exemplifications. Every murder is

unique, but there are many possible murders abstractly defined by, say, three characteristics. But no explanation of an event limited to such a finite description of it can fully account for this and no other murder, this and no other fire. The explanation could just as well explain some other possible fire, and so it explains no fire completely. There are endless characteristics of any given fire not captured in the limited description employed in its explanation.

It may be objected that a fire with an infinity of attributes may be determined by an infinity of causal laws—even if this infinity is unintelligible to us through any of the finite enumeration of laws to which we are restricted. On this view, the fire is *determined* but *unpredictable*. An infinity of causal laws does seem logically possible, but it would defeat the purpose for which such laws were first invoked. This purpose was to make the *infinite* variety of the blooming buzzing sensory world more intelligible by a *finite* number of stable laws. (The causal law is the stable intelligible image of infinitely changing events.)

In the last chapter on Greece, it was argued that no universal attributes exist. The sickly greenness of a cartoon face is not the healthy greenness of a plant. The greenness of one object is not exactly the greenness of another. The greenness of each thing is modified by its unique context. Attributes are each unique. It follows that no *universal attribute* predicted in a causal law is more than an approximation to some non-universal *individual characteristic* which is not fully determined by any causal laws. We conclude that Stoicism is misleading insofar as it is deterministic. Natural laws of causation are not all-powerful or all-determining assuming a given state of the universe. Individual events are to some extent "self-determining" not externally determined by prior causes.

Moral responsibility survives because, although the past determines us in part, it does not determine us completely. Your choices determine your actions in part, but not completely, since other factors always intervene, including the free will of other persons. You are responsible for your actions in general, but for your actions in all their detail.

5. Stoic Ethics

The Stoic God was known under many names: the cosmos, necessity, but also the logos (the divine word), the cosmopolis of rational beings, providence, and natural law. The central precept of Stoic morality was duty for duty's sake. We should do our duty regardless of the consequences, letting the chips fall where they may. The central duty was to conform to nature, to follow all-determining natural law. If determinism is true, it is of course impossible for anyone not to conform to natural law. What is possible is for the individual to conform either consciously or unconsciously. Stoicism advocates conscious rational obedience, without the painful detours of forced obedience. Yet we are eventually coerced to follow natural law even when we follow passion rather than reason.

Stoicism is the first egalitarian philosophy in the history of philosophy. One of its defenders was the Roman Emperor Marcus Aurelius (121-80 A.D.). The following excerpts from Marcus Aurelius bring together many of the key Stoic ideas:

From my brother Verus, love of belongings, love of truth, and love of justice; ...and the conception of an equal commonwealth based on equality of right... and speech, and of imperial rule respecting... the liberty of the subject... Flesh, breath, and the Inner Self—that is all.... As in the near presence of death, despise poor flesh--this refuse of

blood and bones.... Breath too! What is it? A puff of wind, never the same, but every moment exhaling, and again inhaled. Last comes the Inner self--on that stake all. In the gods' work there is providence everywhere. For the action of chance is the course of nature....

From providence flows all; and side by side with it is necessity and the advantage of the universe of which you are a part. To every part of nature that which nature brings, and which helps to its [nature's] conservation is good.... Yet life and death, good report [reputation] and evil report, pain and pleasure, riches and poverty... fall to the good by bad indifferently, and neither ennoble nor demean. The inference is that they are neither good nor evil. By mind-power we apprehend how quickly all things vanish, bodies in the material world, their memories in the lapse of time.... Intelligence... teaches the nature of death, and shows that anyone who looks at it squarely in the face... will come to regard it simply as an act of nature; and none but a child is terrified at that....

Though you live three thousand years... no man, remember, can lose another life than that which now lives, or live another than that which he now loses. The longest and the shortest come to the same thing. The present is the same for all...; what you lose or win is just the flying moment. A man cannot be losing either past or future--how can he be deprived of that which is not his?... ..after fame, oblivion. What then can direct our goings? One thing and one thing alone, philosophy; which is, to keep the deity within inviolate and free from scathe, superior to pleasures and pains, doing nothing at random, nothing falsely or disingenuously, and lacking for nought, whatever others do or leave undone; accepting the apportioned lot, as coming from the same source as man himself; and finally, in all serenity awaiting death, the natural disposition of the elements of which each creature is composed. ...and nature knows no evil.... ..man stands to us in the closest of all relations--we must do good to them and bear with them. But in so far as [other human] individuals obstruct my proper action, man [such an individual] falls into the category of things indifferent, just as much as the sun or wind or wild beast. They may contravene some particular action, but [my] inner impulse and disposition they cannot contravene, for these are subject to [my mental] reservation and also have inner modifying power.... For the understanding modifies and converts every hindrance to action into furtherance of its prime aim; so that checks to action actually advance it, and obstacles in the way promote progress. Whether the physical currents run smooth or rough, let them not sway the governing and sovereign self within.... When these [currents] assimilate themselves to the understanding by that sympathy of the parts which exists in an organic unity, we must not attempt to resist the physical sensation....

The mind of the universe [world soul, cosmopolis] is social. For see, it has made the lower for the sake of the higher; and combines the higher in a mutual harmony. See how it gives its mandate, secures co-ordination, apportions everywhere according to worth.... Do your duty--whether shivering or warm, never mind; heavy-eyed, or with your fill of sleep; ...dying or with other work in hand.... Because your own strength is equal to the task ["ought implies can"--Immanuel Kant), do not assume that it is beyond the powers of man; but if anything is within the powers... of man, believe that it is within your own compass also.... If anyone can... show me that some view or action of mine is wrong, I will cheerfully change: I seek the truth, which never yet hurt any man. What hurts is persisting in self-deceit and ignorance. I do my own duty; all things else distract me not. For they are either things without breath, or things without reason, or things misguided.... ..if we account only that which is in our own control as good or bad, there remains no reason either for arraigning god, or for setting ourselves at feud with man. One and all we work towards one consummation, some knowingly..., others unconsciously.

...my nature owns reason and social obligation; socially, ...my city and country is Rome, as a man, the world. These are the societies, whose advantage can alone be good to me.... You can decline this or that view of the matter, and so escape all tumult of soul; things in themselves have no power to force our judgments.... All things intertwine one with another, in a holy bond.... For the world-order is one made out of all things, and god is one pervading all, and being is one, and law is one, even the common reason of all beings possessed of mind, and truth is one.... Have you ever seen a dismembered hand...? Such does a man, so far as he can, make of himself, when he refuses to accept what befalls, and isolates himself, or when he pursues self-seeking action. You are cast out from the unity of nature, of which you are an organic part; you dismember your own self. But here is this beautiful provision, that it is in your power to re-enter the unity. No other part of the whole doth god privilege, when once severed and dismembered, to reunite...." (Marcus Aurelius, *Meditations*)

A basis for egalitarianism already existed in Aristotle's definition of a human being as a rational (hence self-governing) animal. But Aristotle, like his pupil Alexander the Great, never surrendered the

Greek distinction between free Greeks and weakly rational barbarians.

The Stoics considered even slaves the equal of emperors as members of the ideal cosmopolis, the universal city of all rational beings. The Stoic philosopher, Epictetus (first-second centuries A.D.), was a citizen of the republic of rational beings with Marcus Aurelius. Yet they remained unequal in the earthly polis: Epictetus was born a slave.

Stoicism is well expressed today in the widely-known "serenity prayer": 'God give me the power to change what I can, the courage to accept what I cannot change, and the wisdom to see the difference.' Stoicism was not completely "stoical." It did not urge "resignation" to whatever is. It advocated a duty to bring nature as it is into harmony with intelligible natural law. The Roman Stoics recognized that if a human being is rational and self-governing by nature, slavery--which puts some humans under the irreversible government of others--contradicts natural law. But practical abolition of slavery was considered impossible in antiquity. The Stoics resigned themselves at this point to something which could not be changed. They found consolation in the freedom of the mind from bodily chains which could not be altered. Even the slave is free as a rational being, for no master can enchain his private thoughts. Stoicism was essentially the freedom of thought, it has been said; but Stoic freedom of thought was only the thought (not reality) of freedom.

Stoicism was founded in Greece by Zeno (fourth-third centuries B.C.--not to be confused with the Zeno who argued against motion), and was soon imported into Rome. The Romans did not develop it theoretically as much as practically. Roman jurists championed cosmopolitan Greek philosophy against Rome's provincial past on the frontier of civilization. They were not so much concerned to push Greek speculations further than the Greeks as they were concerned to apply Greek philosophical ideals. Because the empire was so vast, both the public and those responsible for administering the law relied on these jurists for legal guidance. To provide guidance to administrators in distant provinces, the jurisconsults undertook to codify the body of Roman law into systematic digests. Jurisprudence was thus born as a science, borrowing from Stoic principles, and from Aristotelian methods of classification and definition still studied today in elementary logic.

The Roman empire may be understood as a technocracy. *Technocracy* means rule by experts. Rule is justified by the appeal to expertise, to science, rather than by popular elections. More generally, technocracy is the rule by abstract thought rather than hereditary patriarchal authority. Disciplined abstract intelligence arose with the patriarchal revolution in the family (see Chapter Nine). It developed into a rational and self-justifying scientific system. Rule could then be based on an appeal to "reason." Thus authoritarian appeal to patriarchal rights or the claims of superior force became dispensable. In Rome, the vital expertise was legal, jurisprudence, not the natural science expertise of today's technocrats.

It can be argued, however, that the decay of political rights in the empire through the rule of experts had negative consequences. Where it did not lead to despotism, it resulted in an atomization and privatization of life. The political *community* dissolved into a *society* of separate individuals. Citizens no longer participated in the political process. They ceased to identify with the state and withdrew into exclusive pursuit of private interests. This tendency was apparent even in the early days of the empire. The Emperor Augustus was not very successful in his attempt to prevail upon the poet Horace to write hymns of praise to the imperial achievements. Horace and many individuals like him

enjoyed too much the leisure (*otium*) which came from political irresponsibility.

.6 *Rome's Utilitarian Religion*

Despite its defects, the Roman system of private rights is a lasting contribution to Western civilization, just as classical art is the exemplary Greek contribution (see next chapter). It is significant that we do not locate Rome's contribution with Greece's in the realm of art. Greek art may be of unsurpassable beauty because art was their religion: the Olympian religion of classical Greece is the *religion of beauty*. It is said that the Roman religion is the same as the Greek religion except the names of the gods undergo a change: Zeus becomes Jupiter, and so on. But the difference went much deeper. The religion of Roman imperialism is a *religion of utility*.

This Roman religion of utility is, from a philosophical perspective, a version of utilitarianism. Utilitarians judge the morality of an action according to calculations of its utility in maximizing the general welfare of all. Utilitarianism arose as a self-conscious movement in philosophy in the heyday of the British Empire in the eighteenth and nineteenth centuries. But the basic idea of utilitarianism was already present in the official religion of the Roman Empire. The utilitarian standpoint of imperial Rome differs essentially from the Greek aesthetic perspective to be considered in the next chapter. Where the Greeks came to rest in the contemplation of the gods for their own sake, the Romans used the gods for the advancement of public welfare.

The utilitarian goal of the Roman religion can be understood in contrast to the goals of alternative systems of ethics which it rejects: (1) local customary ethics of city-states prior to the creation of vast multi-cultural empires, (2) the egoism of the self-seeking individual who is liberated from local custom but who now confronts imperial rule as a coercive external force, and (3) Stoicism, which we have already examined. The determination of the Stoic is to aim well at natural law and stay conscientiously at his post even if the common good of the empire does not result.

Utilitarianism upholds achievement of the good of "as many as possible" as the standard of moral obligation. Utilitarianism is perhaps natural to a rising imperial state confident of its ability to succeed either aristocratically (by maximizing the general good), or more democratically (by pleasing a society of egoistic subjects). Stoicism, the perspective of a state prepared to abdicate the search for the common good or general happiness, pursues duty for duty's sake regardless of consequences. Stoicism reflects a certain disillusionment with the imperial goal of general welfare or of benefiting as many as possible. It represents a turn inward, away from the real world of competing egoisms towards an ideal universal republic of truth-seeking rational beings--which it merely *aims* to realize.

The utilitarian calculates external cause-effect relationships to promote the general welfare, the greatest happiness for the greatest number, or at least to minimize evil or displeasure. The twentieth-century British utilitarian philosopher Bertrand Russell (1872-1971), who distinguished in the aristocratic fashion between what is good and what pleases, states the pre-Stoic imperial moral responsibility like this:

It is in defining objective rightness that the consequences of an action become relevant. Some moralists, it is true, deny the dependence upon consequences, but that is to be attributed, I think, to confusion with the subjective sense [of rightness]. When people argue as to whether such and such an action is right, they always adduce the

consequences which it may be expected to have. A statesman who has to decide what is the right policy, or a teacher who has to decide what is the right education, will be expected to consider what policy or what education is likely to have the best results. (Bertrand Russell)

Even in the earlier pre-imperial stages of Roman history we find a utilitarian approach to religion. The Roman gods could not be beautiful because the Romans *used* their gods as a means to worldly ends. Their sacrifices and feasts were not free and reverent worship, for they were aimed at fertility, military success, or the realization of other practical interests. Beauty can be experienced only by detaching oneself from practical interests so as to contemplate the god and not view it as a mere means to an end.

In its utilitarian form the Roman religion is a kind of primitive *religion of magic*. Rational calculation of the means to an end and publicly sponsored magic are alternative means to the same utilitarian goal of general welfare. Making a magical fetish out of phrases like the "common good" or "general welfare" can replace confidence in one's ability to calculate the realistic means of achieving it.

Prehistorical religions of magic are usually nature religions which worship as divine the spirits of nature. The Roman religion differentiated its divinities from nature and natural powers. Even so, the Roman gods, reduced to instruments, are reduced to mere things and thus robbed of true divinity. This tendency is illustrated by the Roman habit of worshipping pure abstractions, such as Concord or Fortune. The list of Roman deities is practically endless. The Romans imported gods from all over the empire, levelling them all as means to the same end of *welfare*. They prided themselves on being the most religious of peoples, but were arguably the opposite. Their religion was the contrary of turning away from oneself and one's particular interests. In this respect Roman piety was really godlessness. It is true that the Romans were serious about their religion. But this seriousness, so different from the joyful playfulness of Greek religion (Chapter Five), was brought about by a manipulative approach to the gods.

The nineteenth-century British utilitarian philosopher John Stuart Mill illustrates utilitarianism's "irreligious" defense of religion:

We not uncommonly hear the doctrine of utility inveighed against as a *godless* doctrine. If it be necessary to say anything at all against so mere an assumption, we may say that the question depends on what idea we have formed of the moral character of the Deity. If it be a true belief that God desires, above all things, the happiness of his creatures, and that this was his purpose in their creation, utility is not only not a godless doctrine, but more profoundly religious than any other. (John Stuart Mill, *Utilitarianism*, 379)

A "religious" utilitarian believes that one's deepest value, whether the common happiness (Mill) or the common good (Russell), is backed up by superhuman might whose assistance we may invoke. What is irreligious about such religiosity is this: it insists that we so surely know the nature of our deepest value that we may make this knowledge a condition of our submission to the divine will. A reverent faith in God no matter what ("Thy will be done...") is missing. A utilitarianism will sure of its goal takes precedence over any inscrutable divine will.

The utilitarian character of Roman religion is illustrated by the worship of *Fortune*. This cult has been thought to show the modesty of the Romans, who declined to attribute their worldly success to their own courage and endeavor. It really showed their immodesty in raising their own temporal success to the status of a god. The worship of Fortune also shows how the Roman religion is a state religion.

Fortune grew into an important divinity as the Roman state, in its expansion, was enjoyed its favor. (The worship of *Concord*, consecrating the harmony of social classes in Rome, also illustrates Roman religion as a state religion.)

The emperor eventually came to incarnate public Fortune, which contributed to deification of the emperor as one god among others. The emperor cult also grew because the empire expanded to include Oriental populations used to the idea of divine kingship. Originally the meaning of *emperor worship* was different in Rome from the Oriental provinces. Caesar, in proposing such deification, specified it was to be inapplicable in Rome. But the empire's history led to increasing Orientalization.

7. *Israel and Rome: A Rendezvous With Destiny*

Roman religion in one way bears a similarity to Judaism. The Jews also pursued a utilitarian aim in their religion, namely, the survival and welfare of Israel as the key to universal salvation. The acceptance of despotism by a population is motivated by a desire for security and welfare. In Judaism such acceptance was an act of religious rather than political obedience. A difference between the Roman religion and Judaism is that the Roman's practical aim became less focussed on the welfare of one chosen people such as Rome. It was universalized into an aim of universal welfare embracing all peoples of the empire. On the other hand, Rome's idea of welfare was far more everyday than the lofty ethical vision of the Hebrew prophetic tradition in the Old Testament.

If the Roman religion has a claim to superiority in the world-historical story of freedom, it is because of Rome's nondespotic idea of law as something beyond the will of the Lord. Yet there was always a close connection between law and religion in Rome. Just as religion in Rome was a pursuit of worldly interests, so the legal pursuit of worldly interests was shrouded in religion. Early Roman law was ritualistic, requiring the use of magic-like formulas kept in secrecy by a priestly class.

The great contribution eventually made by Roman law was the recognition of individual personal rights. Yet Roman law chiefly conceived a "person" abstractly as a holder of property rights--that is, only as an isolated member of economic society, as a member of a family or political community. In Rome the family was originally defined by the father's rights of dominion over members of his family. When sons, wives, or slaves became emancipated, they become property owners in their own right. The imperial state of property owners failed to be an ethical community because the bureaucratic imperial administration was too remote and unwieldy for the citizen to be able to identify with it.

Post-utilitarian Rome and Stoic philosophy helped create "natural law" tradition which eventually became the "human rights" tradition of today. Yet there are considerable differences between modern natural law theories and the historical law of ancient Rome. Since the sixteenth century, modern legal theorists have popularized the myth that the surviving codes and digests of Roman law are remnants of a highly developed rational system of law. This system allegedly existed in Rome but later was lost. These "Romanists" sought to restore the original system. In the process they produced a modern theory of "natural law" which differs from the historical law of Rome.

Some basic terminology of modern European legal theory was drawn from Roman law: "person," "property," "contract," and so on. However, several concepts of modern natural law theory are foreign to Roman law. Central among these modern concepts are the idea of a *presocial state of*

nature (e.g., Hobbes--see Chapter Nine), the assumption of *free non-social individuals* living in a state of nature and yet rational enough to negotiate, the concept of a *social contract* constituting collective life on the basis of *consent*, and the idea of *natural rights* which the contract was supposed to protect. The Romans never talked about "rights," though they did speak of permissible legal "actions." And for the Romans a "person" was a role, a legal mask. It was not the underlying subject, individual role-taker, or possessor of rights. Further, the Roman idea of a "contract" is based on some physical action, such as handing an object over to someone, rather than on anything as subjective as "consent." Finally, an obvious inconsistency between Roman law and modern natural law theory is that the former, unlike the latter, never rejected the institution of slavery.

Yet in its historical evolution, Roman law, under the impact of both increasing commerce and the Stoic natural-law philosophy, tended toward the extension of private property rights to all, including slaves. Further, the Romans initiated the task of scientifically systematizing the law, thereby anticipating modern European codes and natural-law systems.

The Romans distinguished three types of law: *civil law*, which was the law of a particular city; *jus gentium*, which consisted in practices common to different human societies; and *natural law*, which was based on our universal biological nature. In its evolution, Roman civil law gave way to *jus gentium* where its original civil law (as in the case of its denial of commercial or private rights to foreigners) contradicted the custom of civilized peoples. Even *jus gentium* yielded authority to natural law where (as in the question of slavery) the two were in conflict.

We can thus see in Rome the incipient stages of a universal system of natural human rights. But, as providence would have it, such a system was also present in Judaism, which held that the human spirit was made in the image of God. To be sure, the effect of this thought was limited by the equally Hebrew notion that the human body is, like all creation, God's property: ultimately you do not own your body; rather, God merely lends it to you. But after Judaism was encompassed in the Graeco-Roman world, the budding Roman system of human rights seems to have triggered the discovery in Judaism of our "divine image" as human beings. This discovery, at the crossroads of Rome and Israel, produced the Christian idea of God's Incarnation in humanity.

Summary Review

The preceding chapter has sought to use Stoic Roman philosophy to illuminate aspects of ancient Roman law and civilization. In the larger context of the story of human freedom, it has identified Stoic philosophy as a contributing factor in Rome's eventual acceptance of Christian concepts of universal freedom and equality. Finally, the chapter has used the Stoic belief in determinism as an occasion to interrogate the truth of this doctrine.

HEURISTIC THESIS:

Determinism was upheld by ancient Roman Stoics. It asserts that the future would be completely predictable as an effect of the present on one condition: the possibility of (a) complete knowledge of natural laws of cause and effect, and (b) complete knowledge of the causal present must be realized.

Determinism, however, appears false. If complete knowledge of natural laws is to be possible, these laws must be finite in number. And they must describe predicted events by a finite number of repeatable (general) characteristics known from the past or present.

But the description of no concrete event is ever exhausted by a finite set of repeatable characteristics. Suppose two blossomings approximately satisfy the same finite set of general characteristics. They may still differ by two unrepeatable unique rednesses, or by a general repeatable characteristic not contained in that finite set. Therefore, every prediction of an event leaves some unique or general characteristic unpredictable and undetermined by the present.

The only determinism which survives excludes the complete predictability of the future. It would allow an unknowable infinity of natural laws and general characteristics. A criticism of this determinism is given in the next chapter, which argues against the existence of any general characteristics.