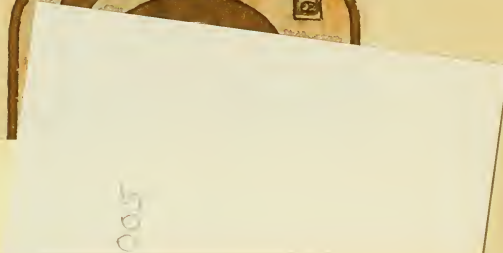


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THE INTERNATIONAL LAW AND CUSTOM
OF ANCIENT GREECE AND ROME



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THE INTERNATIONAL LAW AND CUSTOM OF ANCIENT GREECE AND ROME

BY

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IN TWO VOLUMES
VOLUME II

JX 200
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v. 2

MACMILLAN AND CO., LIMITED
ST. MARTIN'S STREET, LONDON

1911

GLASGOW: PRINTED AT THE UNIVERSITY PRESS
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CHAPTER XVI

TREATIES: CONFEDERATIONS AND ALLIANCES

THE practice of establishing confederations and alliances was frequent amongst the Greeks and the Romans, particularly so in the case of the former. Indeed, all the nations of antiquity, in spite of bellicose proclivities universally manifested, fully recognized the advantages of union and harmony between the civilized peoples, and accordingly often entered into federal pacts, or into more temporary and less comprehensive alliances. But usually such a policy obtained where there was a certain affinity between the nations,—an affinity due to common origin, similarity of national life and institutions, or common language. Thus in ancient China alliances with the alien barbarians could scarcely be dreamt of, but there were frequent confederations set up between the Chinese States, for which purpose the sovereigns usually attended in person general conferences specially convened therefor. Similarly the Phoenician cities entered into treaties of alliance with the object of mutual protection ; and even subsequent to their conquest by the Assyrians, the Babylonians, and the Persians, successively, they endeavoured to arrange a congress for the discussion and settlement of their common affairs, and for the establishment of a federation. But this effort failed owing to the jealous rivalry of Sidon and Tyre, each of which cities—as in the notorious case of Athens and Sparta—hankered after the political hegemony, if not the virtual supremacy.

Confederations
in antiquity.

Early Greek
confederations—
religious
character.

In the federations of the earlier Hellenic history, religious practices and ritual observances played an important part.¹ The federal cities had their common hearths and altars; thus Pausanias mentions the common hearths of the Arcadians.² They resorted to common temples, worshipped certain gods in common, participated in the same rites, celebrated the same anniversaries with common feasts and games. Thus the Ionian colonies in Asia Minor, between which a bond of this description existed, had their Panionium (Πανιώνιον),³ their place of assembly, at Mycale, a promontory near Miletus, and the common temples erected there. Each year they met to celebrate their festival, the Panionia (τὰ Πανιώνια), to offer their sacrifices to Poseidon, and to partake of the common meals.⁴ At one time, when the Ionians revolted against Persia, the amphictyony assumed to some extent the functions and authority of a federal council for regulating the common interests of its members. Thus, having heard of the Persian advance, the Ionians despatched their respective deputies to the Panionium where, after due consultation together, various courses and proceedings were decided upon.⁵ Similarly, the Dorian colonies in Asia possessed a common temple, dedicated to Apollo and Poseidon, at the promontory of Triopium.⁶ And so also in Greece we find Boeotian cities united, meeting together on the occasion of their annual feast, and worshipping at the temple of Athena Itonia.⁷ Further, Pausanias refers to

¹ Cf. P. Foucart, *Des associations religieuses chez les Grecs* (Paris, 1873).

² Pausan. viii. 53: ἐστία κοινὴ τῶν Ἀρκάδων.

³ Cf. Herodot. i. 141, 142, 143, 148, 170, etc.

⁴ Herodot. i. 148: . . . συλλεγόμενοι ἀπὸ τῶν πολιῶν Ἴωνες, ἄγεσκον ὄρτην, τῇ ἔθεντο ὄνομα Πανιώνια.—Strabo, xiv. 1. 20: Πανιώνια, κοινὴ πανήγυρις τῶν Ἴώνων συντελεῖται τῇ Ποσειδῶνι καὶ θυσία.—Cf. Diodor. xv. 49.

⁵ Herodot. vi. 7.

⁶ Herodot. i. 144.—Cf. Aristides of Miletus, in *Frag. hist. Graec.* ed. Didot, vol. iv. p. 324.

⁷ Pausan. ix. 34.

the Achaean cities which offered their sacrifices in common to Demeter Panachaea at Aegium.¹ And in Argolis there was a national religious union established by the Triphylian townships, which assembled at the promontory of Samicum for the worship of Poseidon Samios.²

Such associations or leagues of cities were designated *amphictyonies*³ (ἀμφικτυονία), and implied a more or less permanent tie explicitly established. The pan-Hellenic assemblings to witness or take part in the Olympic, Pythian, Nemean, and Isthmian games were more universal in extent and popular in character, and were rather of the nature of implicit associations for the time being, and based on the recognition of racial community.

The word *amphictyony*⁴ was derived by ancient writers from the name of the mythical hero Amphictyon; but there is no doubt that it owes its origin to the term ἀμφικτύονες, practically equivalent to the word περικτύονες—the alternative form περιούκοι being more usual in prose—and hence signifying surrounding dwellers, neighbours.⁵

There were numerous amphictyonies in Greece, as, for example (apart from those already mentioned), those of Calauria, Thermopylae, Delos, Delphi. The island of Calauria was the place of assembly of the representatives (the θεωποί, delegates on missions of a religious

¹ *Ibid.* vii. 24.

² Strabo, viii. 3, 13 (p. 343).

³ Cf. G. de Sainte-Croix, *Des anciens gouvernemens fédératifs* (Paris, 1798), pp. 1-270; K. O. Müller, *Die Dorier* (being vols. ii. and iii. of *Geschichten hellenischer Stämme und Städte*, 3 Bde. (Breslau, 1844), Bk. ii. pt. 3, § 5; G. Grote, *History of Greece* (London, 1872, etc.), vol. ii. pp. 169 *seq.*; F. W. Tittmann, *Über den Bund der Amphiktyonen . . .* (Berlin, 1812); H. Bürgel, *Die Pylaeisch-Delphische Amphiktyonie* (München, 1877), esp. pp. 197 *seq.*; E. A. Freeman, *History of Federal Government in Greece and Italy* (London, 1893), esp. pp. 95-111; P. Foucart, *s.v. Amphiktyones*, in Daremberg-Saglio, vol. i. p. 235.

⁴ Strictly speaking, *amphictiony* is the correct spelling; but the customary form is here retained.

⁵ Cf. *Iliad*, xviii. 212; xix. 104, 109; *Odyss.* ii. 65.—The word is even found in the form of the original spelling in inscriptions, as, for example, in *Corp. inscrip. Graec.* i. 805.

nature, have already been referred to¹) of the seven towns of Athens, Aegina, Hermione, Epidaurus, Nauplia, Prasiae, and Orchomenus; later Argos acquired membership in place of Nauplia, and Sparta superseded Prasiae.² This association, established probably for commercial reasons as much as for religious objects, possessed an international character, and continued its peaceful existence until Athens severed her relationships with Aegina, when the intercourse also between the other cities was in consequence disturbed. The amphictyony of Thermopylae was originally constituted by the neighbouring cities,³ which held annual festivals there, offering common sacrifices, and worshipping in the temple of Demeter.⁴ As for Delos, the Ionians of the neighbouring islands despatched their representatives there, to celebrate the festivals, and assist at the athletic and musical competitions held in honour of Apollo.⁵ The Delian amphictyony was re-established by Athens in 426 B.C., but it then assumed a somewhat different character, inasmuch as the main motive of Athens in effecting the restoration of the league was to bring about the religious unity of her empire. There is an extant inscription belonging to the earlier portion of the fourth century (c. 377-374 B.C.), which indicates that the association was still composed of Ionian islanders under the leadership of Athens, and that the term *Ἀμφικτύονες* was still applied to the Athenian presiding or administrative officers, who shared the guardianship of the temple with the delegates of the other constituent States.⁶

¹ See vol. i. pp. 306, 314. ² Strabo, viii. 6. 14. ³ Pausan. x. 8.

⁴ Strabo, ix. 5. 17: *Δήμητρος ἱερὸν ἐν ᾧ θυσίαν ἐτέλουν οἱ ἀμφικτύονες.*

⁵ Thuc. iii. 104: *ἦν δέ ποτε καὶ τὸ πάλαι μεγάλη ξύνοδος ἐς τὴν Δῆλον τῶν Ἰώνων τε καὶ περικτιόνων νησιωτῶν· ξύν τε γὰρ γυμναξίαι καὶ παισὶν ἐθεώρουν, . . . καὶ ἀγῶν ἐποιεῖτο καὶ γυμνικὸς καὶ μουσικὸς, χοροὺς τε ἀνήγον αἱ πόλεις.*

⁶ See Hicks, no. 104; *Corp. inscrip. Graec.* 158; Michel, 577; and cf. Hicks, 50, as to the Athenian administration of the Delian temple.

The most famous of these associations was the Delphian amphictyony which came to be denoted by the general name of the Amphictyonic Council. Like the Calaurian association, it was an intertribal or international union, inasmuch as it was composed of twelve kindred tribes or nationalities (ἔθνη). There appears to be a lack of unanimity as to the names of these tribes, but, in all probability, they were the following: Thessalians, Dorians, Phocians, Locrians, Boeotians, Ionians, Perrhaebi, Magnetes, Oetaeans, Phthiotian Achaeans, Dolopes, and Malians.¹ The very names point to the great antiquity of the Council. The names of several of these tribes scarcely ever appear in the historical period, and the fact that the Dorians assumed an equal position with the Malians and the Dolopes shows that the Council was in existence before the Dorian conquest of Peloponnesus. The association comprised also the colonies of these tribes. Although it is sometimes described as the common assemblage of the Greeks, τὸ κοινὸν τῶν Ἑλλήνων συνέδριον,² or, in Cicero's phrase, 'commune Graeciae concilium,'³ it was not a fully representative body, as some of the peoples of Hellas, such as the Arcadians, the Aetolians, the Dryopians, and probably the Achaeans of the Peloponnese were excluded, though they had the right to make use of the temple of Delphi.

The Delphic amphictyony.

The Amphictyonic Council.

Representatives.

The Council assembled twice annually, at Thermopylae in the spring, and at Delphi in the autumn. Each of the tribes possessed two votes, so that the maximum number of votes was twenty-four, and all were of equal force.⁴ The various towns belonging to each tribe must in some way have arranged amongst themselves as to what individuals were to be chosen

¹ In regard to the list of the members, there are several discrepancies in the statements of Aeschines, Pausanias, and Harpocration.—Cf. Tittmann, *op. cit.* ss. 3-5.

² Demosth. *De coron.* 155.

³ Cic. *De invent.* ii. 23.

⁴ Aeschin. *De fals. leg.* 116: καὶ τούτων ἕδειξα ἕκαστον ἔθνος ἰσόψηφον γινόμενον.

delegates. In some cases, it may be, a leading city may have been appointed either permanently or for a definite period to despatch deputies as representing the entire tribe; in other cases, the towns may have fulfilled this function in rotation. In any event, there is no clear information on the point, which therefore remains purely conjectural. There were two kinds of representatives. The hieromnemes (*ιερομνήμονες*),—sometimes described also as *Ἀμφικτιόνων οἱ σύνεδροι*—and the pylagorae (*πυλαγόραι*), who were also called *ἀγορατροί*.¹ It is not definitely known what their respective functions and positions were. From a passage of Aeschines it would appear that the hieromnemes constituted the official, authoritative assembly, and were alone empowered to transact the business and draw up the resolutions.² And it was they also who determined the limits of the sacred territory (designated in an inscription³ *ιερὰ χώρα*) relating to the common temples. Demosthenes, however, mentions a decree and speaks of the resolution relating thereto as 'having been passed by the pylagorae.'⁴ Again, Harpocration regards both classes of officials as the deputies of the cities.⁵ There were also a secretary, or secretaries, and a herald, *ιεροκήρυξ*, who seems to have been a permanent official of the association. In addition to these, in cases of special emergency a general assembly of the votaries was held.⁶

The objects and functions of the Delphic amphictyony were, like those of all other amphictyonies, partly religious and partly political; but, on the whole, the

Objects and functions of the Delphic amphictyony.

¹ Aeschin. *c. Ctesiph.* 113.

² Aeschin. *c. Ctesiph.* 124: *τέλος δὲ ψηφίζονται ἡκειν τοὺς ἱερομνήμονας ἔχοντας δόγμα. . .*

³ *Corp. inscrip. Graec.* 1171.

⁴ Demosth. *De coron.* 197.

⁵ *s.v.* *ιερομνήμονες*: οἱ πεμπόμενοι εἰς τὸ τῶν Ἀμφικτιόνων συνέδριον ἐξ ἑκάστης πόλεως τῶν τοῦ συνεδρίου μετεχουσῶν οὕτω καλοῦνται. . . (Ed. G. Dindorf, Oxonii, 1853, vol. i. p. 159.)—*Cf. s.v.* *πύλαι*, *ibid.* p. 266.

⁶ Aeschin. *c. Ctesiph.* 124: *ἐκκλησίαν γὰρ ὀνομάζουσιν, ὅταν μὴ μόνον τοὺς πυλαγόρους καὶ τοὺς ἱερομνήμονας συγκαλέσωσιν, ἀλλὰ καὶ τοὺς συνθύοντας καὶ χρωμένους τῷ θεῷ.*

former kind predominated. In the first place, the temples concerned and their worship, together with the relative games and festivals, were to be preserved by it,¹ and the sacred territory defended against aggression or pollution; and secondly, it was to adjudge on disputed matters of international conduct, which could be readily decided by reference to the dictates of a common religion,² and, more especially, to mitigate the extreme terrors and hardships of war when waged between any of the communities represented. As an example of its purely religious guardianship may be mentioned the case of Peloponnesian delegates (*theoroi*) who, proceeding to Delphi to consult the oracle, were maltreated by the inhabitants of Megara. The aggrieved parties having laid their complaints before it, the Council held, on the ground that a mission of *theoroi* was of a sacred character, *ἱερᾶς τῆς θεωρίας οὔσης*,³ and their persons inviolable, that the accused were guilty of sacrilege; and consequently some of the offenders were condemned to death, and others to banishment.

Frequently the main principles which the Council undertook to enforce were explicitly formulated and ratified by a formal oath. The use of the oath and of the imprecation in connection with the entering into alliances, and the establishment of other contractual obligations has already been considered.⁴ In the case of the Delphic amphictyony the formula adopted by the confederates has been preserved by Aeschines, and is one of the very earliest documents relating to alliances between western peoples. The members swore they would not destroy any town belonging to the Amphictyonic association, nor cut it off from running water, whether in time of war or of peace; that they

Oath and
imprecation of
the Council.

¹ Strabo, ix. 3. 7 (p. 643 A): . . . περί τε τῶν κοινῶν βουλευσόμενον καὶ τοῦ ἱεροῦ τὴν ἐπιμέλειαν ἔξον κοινοτέραν. . . .

² Dion. Hal. iv. 25: νόμους καταστησάμενος ἔξω τῶν ἰδίων, ὧν ἐκάστη πόλις εἶχε, τοὺς κοινούς ἅπασιν.

³ Plut. *Quaest. Graec.* 59. ⁴ See vol. i. pp. 118 *seq.*, 386, 388 *seq.*, 394, 406.

would declare war against people violating this law, and would destroy their cities; that they would punish by every means in their power all who plundered the property of the god or those who were a party thereto.¹

Jurisdiction.

In another oration² Aeschines gives the formula of imprecation pronounced by the Amphictyons in the time of Solon. It served as a conclusion to the oath, and reinforced the religious sanction. In actual practice the jurisdiction of the Council was often exercised to a wider extent than was ostensibly prescribed by the content of the oath. Thus the first sacred war (596-586 B.C.) was waged apparently for the narrower object of defending the rights and dignity of the temple of Delphi, but in reality it was undertaken on account of wider issues. The Phocian town of Crissa, situated on the heights of Mount Parnassus near the Delphic sanctuary, possessed a strip of territory extending to the Corinthian Gulf, where it had the port of Cirrha. Here most of the inhabitants of foreign States landed who came to consult the oracle; and the Cirrhaeans took advantage of their position to impose exorbitant tolls upon the pilgrims, and to maltreat them in other ways. The Council of the Amphictyons therefore made war on the offenders, captured their city, razed it to the ground, consecrated its territory to the god, and ordained that it should lie waste for ever. Similarly the second sacred war (357-346 B.C.) involved larger matters than the mere protection of the privileges of the Delphian temple. On account of certain differences between Phocis and Thebes, the refusal of the Phocians to aid Epaminondas in his campaign in

¹ Aeschin. *De fals. leg.* 115: ... μηδεμίαν πόλιν τῶν Ἀμφικτυονίδων ἀνάστατον ποιήσιν μηδ' ὑδάτων ναματιαίων εἶρξιν μήτ' ἐν πολέμῳ μήτ' ἐν εἰρήνῃ, εἰάν τις ταῦτα παραβῆ, στρατεύσιν ἐπὶ τοῦτον καὶ τὰς πόλεις ἀναστήσιν, καὶ εἰάν τις ἢ συλᾶ τὰ τοῦ θεοῦ ἢ συνειδῆ τι ἢ βουλευσῆ τι κατὰ τῶν ἱερῶν, τιμωρήσιν καὶ χειρὶ καὶ ποδὶ καὶ φωνῇ καὶ πάσῃ δυνάμει.—Cf. Barbeyrac, *Hist. des anciens traités*, no. 1.

² Aeschin. *c. Ctesiph.* 109-113. For this see vol. i, p. 388.

the Peloponnese, and hostilities against Boeotia after that general's death, the Thebans prevailed upon the Amphictyonic Council to inflict a heavy fine on the Phocians, because they had cultivated a part of the Cirrhaean plain, contrary to the ordinance. The Phocians remonstrating, the fine was doubled by the Amphictyons, who also threatened to reduce them to slavery if they still refused to pay it. Driven to desperation, the Phocians seized the Delphic temple, defeated the Locrians who came to its rescue, destroyed the records containing the sentence of the Council, enlisted the sympathy of Athens and Sparta, defeated the Thebans and Thessalians, and were themselves afterwards vanquished. Philip then intervened, posing as the champion of the Delphic god, and became master of Thessaly. Demosthenes' appeal for the establishment of a confederacy to expel the invader failed. Subsequently Philip compelled the Phocians to surrender, took Delphi, and convoked the Amphictyons to pronounce sentence on those who had been concerned in the sacrilege committed there. The Council decreed that the Phocian cities should be destroyed, and their inhabitants dispersed into villages, each containing not more than fifty houses, and that they should restore the treasures of the temple by annual payments. Sparta's privileges in the Amphictyonic proceedings were revoked, and the two votes of the Phocians were transferred to Philip, who was also to share with the Thebans and the Thessalians the honour of presiding at the Pythian games,—so that Macedon thus became at this time the leading power in Greece.

Hence we see how various political matters were necessarily interwoven with the seemingly exclusive religious jurisdiction of the Amphictyonic Council. Beginning with the practice of pronouncing on charges as to infractions of interstatal or international rights of a sacred description, the Council gradually assumed competence in regard to divers non-religious questions, and occasionally exercised control in political matters of

Not exclusively
religious.

far-reaching importance. From time to time, it even considered claims which were apparently outside its enlarged sphere, as, for example, the request of the Delians to be liberated from the Athenian hegemony, 344 B.C. And, again, more than a century earlier, in 470 B.C., when some Thessalian traders had been plundered and imprisoned by the piratical inhabitants of Scyros, the Council took cognizance of the matter, and ordered the accused to make due restitution. Further, Cicero relates that on one occasion when the Thebans had defeated Sparta they raised a trophy¹ of brass to commemorate the victory, whereupon the Spartans brought an accusation before "the Amphictyons, that is, the General Council of Greece."² The arguments on both sides proceeded at full length, but Cicero does not state the result of the deliberations. Quintilian cites another case. After Alexander had destroyed Thebes, he discovered a document whereby it appeared that the Thebans had lent the Thessalians a hundred talents; and, in recognition of the services of the latter in the siege, Alexander delivered the said document to them. But subsequently, when Thebes was restored by Cassander (315 B.C.), the Thebans demanded the settlement of the debt, and laid their claim before the Council.³ And since, as Quintilian says,⁴ considerations of equity exerted the highest influence with the Amphictyons—"sed vel potentissima apud amphictionas aequi tractatio est"—it is probable that the verdict was in favour of the creditors.⁵

¹ As to erecting trophies, see *infra*, chap. xxv.

² Cic. *De invent.* ii. 23: "Accusantur apud Amphictyonas, id est, apud commune Graeciae concilium."

³ Quintil. *Inst. Orat.* v. 10. 111.: "Cum Thebas evertisset Alexander invenit tabulas, quibus, centum talenta mutua Thessalis dedisse Thebanos, continebatur. Has, quia erat usus commilitio Thessalorum, donavit his ultro; postea restituti a Cassandro Thebani reposcunt Thessalos. Apud amphictionas agitur." ⁴ *Ibid.* v. 10. 118.

⁵ Cf. on the cases mentioned by Cicero and Quintilian, C. Bétant, *An fuerint apud Graecos iudices certi litibus inter civitates componendis* (Berlin, 1862), § 10.

Accordingly, it is clear that the Delphic amphictyony, in spite of the contentions of most writers that it was purely a religious body, exercised a great influence directly or indirectly in the promotion of international comity, and in the regularization of, and insistence on, many principles of interstate practice,—though, of course, its authority was sometimes weakened and its political action hampered through the machinations of this or that State which happened to have acquired a predominance. But in any case we see—and this is of profound significance—the application of the positive sanction issuing from human authority expressly established by compact, in addition to that of the divine sanction arising from the acceptance of the supremacy of the gods, and from an interpretation of their will. Grote thus briefly sums up the position of the Amphictyonic Council in Hellenic affairs: “It is thus that we have to consider the Council as an element in Grecian affairs—an ancient institution, one amongst many instances of the primitive habit of religious fraternisation, but wider and more comprehensive than the rest—at first purely religious, then religious and political at once, lastly more the latter than the former—highly valuable in the infancy, but unsuited to the maturity of Greece, and called into real working only on rare occasions, when its efficiency happened to fall in with the views of Athens, Thebes, or the king of Macedon.”¹

Its influence on international affairs.

Apart from the amphictyonies, there were other examples of congresses and confederations.² There were, for instance, international congresses to regulate certain common interests of a sacred nature, or to secure the permanent enjoyment of certain commercial rights. Thus Plutarch relates that in order to awaken the spirit of the people—in view of the growing and menacing jealousy of Lacedaemon—and make them

Alliances and confederations—non-religious.

¹ *History of Greece*, vol. ii. p. 176.

² Cf. E. A. Freeman, *op. cit.*

feel capable of immense operations, should necessity arise, Pericles issued a decree inviting all the Greeks, whether dwelling in Europe or in Asia, in large cities or small ones, to send delegates to a meeting at Athens for the purpose of deliberating on the restoration of the Greek temples which had been destroyed by the barbarians, on the sacrifices which were due in pursuance of the vows that had been made to the gods before going to battle, and on the rights of maritime navigation.¹ Assemblies were frequently convoked also for the establishment of alliances for purposes of immediate mutual defence or of offensive warfare, or with a view to secure balance of power on a permanent footing. There is no doubt that, apart from these motives, industrial and economic considerations also exercised much influence in the promoting of alliances and federal relationships. As a French writer observes: "Pendant toute l'histoire grecque, les rapports de peuple à peuple dépendirent fréquemment de l'état des terres et des exigences de la classe agricole."² In treaties of this kind the object was explicitly stated, the various *casus belli* enumerated, the duties of the allies or confederates laid down, regulations as to mutual assistance specified, the religious sanction imposed by virtue of the oath, the positive sanction implied in the understanding that on breach of any of the essential conditions the whole treaty was to be considered dissolved, and the infringing States vested with enemy character, and, lastly, provision was usually made for referring

¹ Plut. *Per.* 17: ... πάντας Ἑλληνας τοὺς ὀπίηποτε κατοικοῦντας Εὐρώπης ἢ τῆς Ἀσίας παρακαλεῖν καὶ μικρὰν πόλιν καὶ μεγάλην εἰς σύλλογον πέμπειν Ἀθήναζε τοὺς βουλομένους περὶ τῶν Ἑλληνικῶν ἱερῶν, ἃ κατέπρησαν οἱ βάρβαροι, καὶ τῶν θυσιῶν, αἷς ὀφείλουσιν ὑπὲρ τῆς Ἑλλάδος εὐξάμενοι τοῖς θεοῖς ὅτε πρὸς τοὺς βαρβάρους ἐμάχοντο, καὶ τῆς θαλάττης, ὅπως πλέωσι πάντες ἀδεῶς καὶ τὴν εἰρήνην ἄγωσιν.

² P. Guiraud, *La propriété foncière en Grèce jusqu'à la conquête romaine* (Paris, 1893), p. 615.—Cf. especially liv. ii. chap. iii. pp. 614 seq.: "La propriété foncière et la politique extérieure des états grecs."

disputed matters arising out of the interpretation of the treaty to an arbitral tribunal mutually agreed upon. In some instances such engagements were entered into with a solemn stipulation that the alliances were to be perpetual;—and if these undertakings proved vain in actual practice, they were at least of great importance in the evolution of theoretical principles which, at one time or another, exercised a reactionary influence of greater or lesser efficacy on the determination of inter-statal relationships.

The most important cases of Greek confederacies were the first and the second Athenian leagues, and the Peloponnesian confederacy under the leadership of Sparta. Chief cases of
Greek
confederacies.

First, as to the earlier Athenian league.¹ After the discomfiture of the Persians at Mycale, 479 B.C., the Greek islanders, including the inhabitants of Samos, Chios, and Lesbos, were received into the pan-Hellenic confederacy that had been established to cope with the Persian power. The Ionian and Aetolian cities of Asia Minor were not accepted as members of the league, so that they were obliged to throw themselves on the protection of Athens. After the subjugation of the greater portion of Cyprus by Pausanias, the inhabitants of the other Greek islands joined the confederacy, whilst at Byzantium, which was captured by the Greek fleet, Pausanias offended the allies by his imperious and supercilious conduct, and his alleged medism; whereupon the Greeks of the Hellespont and Ionia appealed to Aristides and Cimon to assume the First Athenian
league.

¹ Cf. Grote, *Hist. of Greece*, vol. iv. pp. 379 *seq.*, chap. xlv.; Köhler, *Urkunden und Untersuchungen zur Geschichte des delisch-attischen Bundes* (in *Abhandlungen d. Kgl. Akad. d. Wissensch. zu Berlin*, 1869, vol. i. pt. ii. pp. 1-211); H. Nöthe, *Der delische Bund, seine Einrichtung und Verfassung* (Magdeburg, 1889); G. Gilbert, *Hanab. d. gr. Staatsalterthümer* (Leipzig, 1893), vol. i. pp. 468 *seq.*; P. Guiraud, *De la condition des alliés pendant la première confédération athénienne* (in *Annuaire de la faculté des lettres de Bordeaux*, vol. v. pp. 168 *seq.*).

command of the fleet.¹ In the meantime the Spartans had despatched Dorcis to supersede Pausanias. By the year 478-477 B.C. the Athenian league, called the 'Confederacy of Delos' (from the arrangement that the allies' delegates should meet periodically for deliberation in the temple of Apollo in Delos), comprised Samos, Chios, Lesbos, Rhodes, Cos, and Tenedos, as well as Miletus, the Greek towns on the peninsula of Chalcidice, and Byzantium; and, after the victory of Cimon over the Persians at the river Eurymedon in Pamphylia, 466 B.C., the Greeks of the Carian, Lycian, and Pamphylian coasts were also admitted into the league.² The assessment of each State in a certain contribution either of ships or of funds (φόρος) was confided to Aristides.³ By the first apportionment, the sum was fixed at 460 talents (about £106,000 sterling). Certain officials called Hellenotamiai (Ἑλληνοταμίαι), Hellenic treasurers, were now appointed for the first time to collect and administer the contributions, which were deposited in the treasury at Delos (afterwards transferred by Pericles to Athens).

Objects of the league.

The original objects of the confederacy were to effect a thorough emancipation of the allies from Persian supremacy, ἐπ' ἐλευθερώσει ἀπὸ τοῦ Μήδου τοῖς Ἑλλησι,⁴ and to combine against any subsequent invasions.⁵ To further this purpose there were to be periodical meetings of the Federal Council in the sanctuary of Apollo at Delos. It was incumbent on

¹ Thus Aristotle (*Ath. Pol.* xxiii. 4) says of the counsels of Aristides and the advantage he took of the opportunity which presented itself by the discredit cast on the Laconians owing to the conduct of Pausanias: ἐπὶ δὲ τὴν ἀπόστασιν τὴν τῶν Ἰώνων ἀπὸ τῆς τῶν Λακεδαιμονίων συμμαχίας Ἀριστείδης ἦν ὁ προτρέψας, τηρήσας τοὺς Λάκωνας διαβεβλημένους διὰ Πανσανίαν.

² Cf. Herodot. ix. 106; Thuc. i. 89, 94, 95, 96, 128; Plut. *Aristid.* 23; Aristot. *Ath. Pol.* xxiii. 5; Diod. xi. 60.

³ Arist. *Ath. Pol.* xxiii. 5: διὸ καὶ τοὺς φόρους οὗτος ἦν ὁ τάξας ταῖς πόλεσι τοὺς πρώτους, ἔπει τρίτῳ μετὰ τὴν ἐν Σαλαμῖνι ναυμαχίαν. . . .

⁴ Thuc. iii. 10.

⁵ Thuc. i. 96; iii. 10.

the Council to discharge, on the one hand, political and diplomatic functions in the determination of the policy of the league, and, on the other, to fulfil judicial and arbitral duties as a federal tribunal.¹ "We have here in truth," says Grote, "one of the few moments in Grecian history wherein a purpose at once common, equal, useful, and innocent, brought together spontaneously many fragments of this disunited race, and overlaid for a time that exclusive bent towards petty and isolated autonomy which ultimately made slaves of them all. It was a proceeding equitable and prudent, in principle as well as in detail; promising at the time the most beneficent consequences,—not merely protection against the Persians, but a standing police of the Aegean Sea, regulated by a common superintending authority. And if such promise was not realized, we shall find that the inherent defects of the allies, indisposing them to the hearty appreciation and steady performance of their duties as equal confederates, are at least as much chargeable with the failure as the ambition of Athens."²

The hegemony of Athens gradually developed into a decisive political preponderance, and the confederacy was after a time virtually transformed into an Athenian empire. The allies became weary of the incessant wars; they disliked absence from home, as Thucydides says;³ and ultimately most of them agreed to pay an annual sum of money instead of supplying ships and troops,—*χρήματα ἐτάξαντο ἀντὶ τῶν νεῶν τὸ ἰκνούμενον ἀνάλωμα φέρειν...*⁴ Such States as had proved recalcitrant, either by refusing to contribute contingents or money, as the case may be, or by openly revolting through the increasing oppressiveness of the Athenian supremacy,

Athenian
hegemony and
sovereignty.

¹ Thuc. i. 96, 97.—Cf. Köhler, *loc. cit.* pp. 88 *seq.*

² *Hist. of Greece*, vol. iv. chap. xliv. p. 355.

³ Thuc. i. 99: *ἵνα μὴ ἀπ' οἴκου ᾖσι.*

⁴ Thuc. i. 99.—Cf. Köhler, *loc. cit.* pp. 93 *seq.*; Nöthe, *op. cit.* pp. 9 *seq.*

were vigorously reduced to the condition of disarmed and passive tributaries, and the terms of their subjection to Athens were severally determined by special treaties. Hermocrates addressing the Camarinaeans in Sicily, 415 B.C., warned them that the Athenians whilst pretending to liberate Hellas were really enslaving it. Thus, the Ionians and other colonists of theirs who were their allies (he reminded them) wanting to revenge themselves on the Persians, freely invited the Athenians to be their leaders; and the invitation was accepted. "But soon they charged them, some with desertion, and some with making war upon each other; any plausible accusation which they could bring against any of them became an excuse for their overthrow."¹ In accordance with this policy, Naxos,² the largest island of the Cyclades, was in 466 B.C. subjugated and deprived of its autonomy; and soon after, Thasos shared the same fate. By the year 454 B.C. all the allied States, except Samos, Lesbos, and Chios, had become 'subjects' (ὕπηκοοι) of Athens; and the treasury of the league was removed from Delos to Athens.³ From about 447 B.C. the power of Athens, however, began to decline; and in 412 B.C., in the twentieth year of the Peloponnesian war, the league was broken up through the jealous activities of her inveterate rival, Sparta.⁴

The Confederates were officially designated οἱ σύμμαχοι (allies) or αἱ πόλεις (cities, states);⁵ but in ordinary usage, and to indicate the real character of the relation-

¹ Thuc. vi. 76: . . . τοὺς μὲν λειποστρατίαν, τοὺς δὲ ἐπ' ἀλλήλους στρατεύειν, τοῖς δ' ὡς ἐκάστοις τινὰ εἶχον αἰτίαν εὐπρεπῆ, ἐπεινεγκόντες κατεστρέψαντο.

² Thuc. i. 98: . . . πρώτη τε αὕτη πόλις ξυμμαχίς παρὰ τὸ καθεστηκὸς ἐδουλώθη, ἔπειτα δὲ καὶ τῶν ἄλλων ὡς ἐκάστη ξυνέβη.—Cf. *ibid.* i. 100, 101.

³ Cf. Arist. *Ath. Pol.* xxiv. 2; *Corp. inscrip. Att.* i. 260.

⁴ Thuc. viii. 14, 22.

⁵ Cf. *Corp. inscrip. Att.* i. 9, 31, 37, 40.—Thus i. 9 speaks of ἡ Ἀθηναίων ξυμμαχία.

ships, they came to be described as *ὑπήκοοι* (subjects).¹ Some were autonomous allies, others were tributary.² The former had to supply a specified number of fully equipped vessels of war; but in reference to their internal administration they enjoyed independence.³ The latter had to pay a yearly tribute, and were subject to certain restrictions in regard to the character of their constitution and internal administration.⁴ Athens maintained garrisons in many of the allied towns; and in the case also of the subject confederates, public officers (*ἐπίσκοποι*) were despatched as overseers of their civil affairs.⁵ The prevailing form of government was democratic;⁶ but in some cases aristocracies or oligarchies were retained, as in Samos,⁷ and Mytilene,⁸ which were autonomous States prior to their subjugation. It appears that the tributary allies were subsequently divided into tribute-districts, which were also used as divisions in order to facilitate the central administration.⁹

¹ Cf. Thuc. vi. 22, 43, 69; vii. 57.—See generally A. Fränkel, *De condicione, jure, jurisdictione sociorum Atheniensium* (Leipzig, 1878), and esp. pp. 9 *seq.*

² Thucydides, in vii. 57, does not appear to draw a precise distinction between *αὐτόνομοι* and *ὑποτελεῖς φόρου* (subject to taxation). Cf. *ibid.* i. 19; iii. 10; vi. 85.

³ For example, Thucydides says, vi. 85: *Χίους μὲν καὶ Μηθυμναίους νεῶν, παροχῇ* [according to another reading, *παροκωχῇ*] *αὐτονόμους*.—vii. 57: *τούτων Χίιοι οὐχ ὑποτελεῖς ὄντες φόρου, ναῦς δὲ παρέχοντες, αὐτόνομοι ξυνέσποντο*. . . . *Μηθυμναῖοι μὲν ναυσὶ καὶ οὐ φόρῳ ὑπήκοοι*. . . . (The Chians were independent, and, instead of paying tribute, provided ships. . . . The Methymnaeans furnished ships, but were not tributaries.)

⁴ Cf. Thuc. vi. 85; vii. 57.—But in iii. 10 the Mytilenaeans are made to say that all the allies were enslaved except themselves and the Chians, *οἱ ξύμμαχοι ἐδουλώθησαν πλὴν ἡμῶν καὶ Χίων*.

⁵ Cf. Aristoph. *Aves*, 1021 *seq.*; *Corp. inscrip. Graec.* i. 110.

⁶ Thuc. viii. 48, 64, 65. ⁷ Thuc. i. 115.

⁸ Thuc. iii. 27, 47.

⁹ Cf. *Corp. inscrip. Att.* i. 37; Hicks, 64; *Corp. inscrip. Att.* i. 31; Hicks, 41: . . . *βοηθεῖν τὰ[s πόλεις]ὡς ὄχσῳ]τατα κατὰ τὰς χσυγγραφὰς* . . . (ll. 14-15),—the cities of the Athenian confederacy are to defend

In addition to the regular tax (*φόρος*), Athens claimed the right, in cases of emergency, to impose on some of the allies a further tribute (*ἐπιφορά*).¹ Pericles claimed that Athens was entitled to spend the money as she pleased, and that the allies had no right whatever to question the mode of its appropriation, provided they were defended from the Persians, and were afforded the security purchased by such contributions.² Sometimes a city was exempted from taxation for a certain period (as, for instance, Methone, in 428-7 B.C.),³ in which case it had to contribute only the *ἀπαρχή*, or *ἀπαρχαί* (that is, the first-fruits, for sacrificial purposes), consisting of a sixtieth part of the amount of the ordinary tax.⁴ Just before the dissolution of the league, Athens substituted for the old tribute a five per cent. *ad valorem* duty (*εἰκοστή*) on all exports and imports of the allies.⁵ The reason for this action was, according to Thucydides,⁶ the expectation of raising larger funds; but probably it was due to the irregularity of the ordinary payments, and the greater difficulty experienced in collecting them owing to the continuing defections. Considered merely as tithes to the gods, and not as tribute in the strict sense, a ram and two sheep had to be provided for the sacrifices at the Panathenaia by each

Brea, an Athenian colony in Thrace in accordance with the *ἐνυγγραφαί*, viz. the laws drawn up by special commissioners, and approved by the council and assembly.—For a different opinion see Köhler, *loc. cit.* pp. 125-6; Nöthe, *op. cit.* p. 6.

¹ *Corp. inscrip. Att.* i. 240-244, 249, 252, 256.

² Plut. *Pericl.* 12 : ἐδίδασκεν οὖν ὁ Περικλῆς τὸν δῆμον, ὅτι χρημάτων μὲν οὐκ ὀφείλουσι τοῖς συμμάχοις λόγον προπολεμοῦντες αὐτῶν καὶ τοὺς βαρβάρους ἀνείργοντες, οὐχ ἵππον, οὐ ναῦν, οὐχ ὀπλίτην, ἀλλὰ χρήματα μόνον τελούντων. . .

³ *Corp. inscrip. Att.* i. 40.

⁴ *Ibid.* i. 257 : αἶδε τῶ(ν) πόλεων αὐτῆν τὴν ἀπαρχὴν ἀπήγαγον.

⁵ *Corp. inscrip. Graec.* 538.

⁶ Thuc. vii. 28 : καὶ τὴν εἰκοστὴν ὑπὸ τοῦτον τὸν χρόνον [*i.e.* about 413-412 B.C.] τῶν κατὰ θάλασσαν ἀντὶ τοῦ φόρου τοῖς ὑπηκόοις ἐποίησαν, πλείω νομίζοντες ἂν σφίσι χρήματα οὕτω προσιέναι.

of the allies and the cleruchs.¹ They shared in the sacred rites and festivals, and so they were obliged to offer to the Eleusinian goddesses the same tribute of grain as the Athenians devoted.²

Athens assumed exclusive jurisdiction in material questions relating to federal institutions, and especially so in the case of offences against herself in her capacity as head of the league. Thus the Athenian tribunals regularly tried cases of treason, and of hostility on the part of the alleged States against Athens herself,³ as well as all serious offences against the federal government.⁴ The Athenian courts served also as final courts of appeal in the case of criminal proceedings against the citizens of any allied State. As to other matters, it has already been stated, in considering the broader question of private international law in Greece, and the jurisdiction relating to foreigners, that with regard to the *δίκαι συμβόλαιαι*, that is, causes arising out of commercial agreements entered into between subjects of different countries, a special procedure obtained within the league; that probably such suits were heard by the tribunals of the city where the defendant was domiciled.⁵

The second Athenian league⁶ was established with the avowed object of resisting the aggression of Lacedaemon, and of ensuring the liberty and autonomy of the allies.⁷

¹ As to the allies, *Corp. inscrip. Att.* i. 9; i. 37; as to the cleruchs, i. 31.

² Cf. Dittenberger, *Sylloge inscrip. Graec.* 13, for an act of the Ecclesia of 440 B.C.; cf. the passage: τὰς δὲ πόλεις (ἐγ)λ(ο)γέας ἐλέσθαι τοῦ καρποῦ, καθότι ἂν δοκῆι αὐτῆσι ἄριστα ὁ καρπὸς) ἐγλεγήσεσθαι.

³ Aristoph. *Wasps*, 288 seq.; *Peace*, 639 seq.

⁴ *Corp. inscrip. Att.* i. 38. (But the fragments of this inscription are very much mutilated.)

⁵ See vol. i. pp. 198 seq.

⁶ Cf. G. Busolt, *Der zweite athenische Bund* (in *Jahrbuch für classische Philologie*, Suppl. vii. 1873-5, pp. 641-866).

⁷ For a decree, 377 B.C. (inscription on a stele), relating to the establishment of the second Athenian Confederacy, see *Corp. inscrip.*

The various constituent States were to be free to adopt any form of government they pleased, and were not to be obliged to receive Athenian garrisons or accede to the intervention of Athenian officials in their civil administration.¹ The Athenians and their allies engaged to come to the assistance of any confederate, against whom hostilities might be directed either by land or sea. A clause to this effect is invariably found in alliances of this nature, and in almost every case is couched in this stereotyped form :

...βοηθεῖν Ἀθηναίους καὶ τοὺς συμμαχοὺς
τούτοις καὶ κατὰ γῆν καὶ κατὰ θάλατταν
παντὶ σθένει κατὰ τὸ δυνατόν.²

By 387 B.C. Athens had already effected an alliance with Chios, Mytilene, Thasos, Tenedos, Cos, Carpathos, Chalcedon, Rhodes, and others. In view of the aggressions of the Spartans in Boeotia, their reduction of Mantinea, their interference in the Olynthian confederation, and their expedition against Thebes, the Athenians next allied themselves to the latter city, 378 B.C., and through the exertions of Chabrias, Timotheus, and Callistratus, the confederacy was so enlarged that by 357 B.C. it included over seventy members. But, as usual, harmony, stability, and unanimity of purpose were found impossible. Defections soon began to be as frequent as accessions had been before. Organizations quickly constructed and lacking a solid basis of union inevitably tended just as quickly to disintegrate. During the Social war (357 B.C.), the desertion of members continued; and after the battle of Chaeronea, with the consequent extinction of Greek liberty, the league was completely dissolved.

Att. ii. 17, ll. 9 *seq.*, ll. 46 *seq.*; Michel, 86; Hicks, 101; Rangabé, *Antiq. hellén.* 381, 381b.—Thus lines 9-11 of ii. 17 are as follows:

... ὅπως ἂν Λα(κε)δ(αιμό)νιοι ἑώσι τοὺς Ἑλλη-
νας ἐλευθέρους (καὶ) αὐτονόμους ἡσυχίαν
ἄγειν...

¹ Hicks, 101, ll. 25 *seq.*

² Hicks, 101, ll. 49-51.

The official title of the second Athenian confederation was οἱ Ἀθηναῖοι καὶ οἱ σύμμαχοι (the Athenians and the allies).¹ Athens assumed the general hegemony. She exercised supreme control over the military affairs, and acted as the representative of the entire league in relationships with foreign States.² Each ally appointed a delegate to the Federal Council, which is frequently described as οἱ σύνεδροι τῶν συμμάχων (the commissioners of the allies).³ It sat at Athens, where, it would appear, the delegates had also permanent residences; whether these were assigned to them by the Athenian government or maintained by their respective States is not known. Each member possessed one vote,—a provision which was a great improvement on the cumbrous machinery of the first confederacy. Probably there were no articles of federation in the strict sense of the term,⁴ as is now understood in connection with a federal government, for the purpose of specifying the rights and obligations of the members; but, rather, Athens entered into separate treaties—of course, more or less to the same effect—with the several States.⁵

Originally it was understood that the allies' contribution was to be only in the form of military or naval contingents,⁶ that their independence was to be preserved, that Athens abandoned the policy of κληρουχίαι⁷ (that is, relinquished all claim to land acquired in allies' territory), that she should station no garrisons in their territory. But in actual practice military service was once more gradually replaced by money supplies—virtually taxes—which now, however, did not bear the detested name of φόρος, but were termed

Position of
Athens and the
allies.

Contributions
of the allies.

¹ Cf. *Corp. inscrip. Att.* ii. 17, 19.

² Diodor. xv. 28; Xenoph. *De vectig.* v. 6.

³ *Corp. inscrip. Att.* ii. 17; ll. 43-4.—Cf. Aeschin. *c. Ctesiph.* 74.

⁴ *Corp. inscrip. Att.* ii. 17; Hicks, 101.

⁵ Cf. *Corp. inscrip. Att.* ii. 49, 109, 17b, 49b.

⁶ *Corp. inscrip. Att.* ii. 17, ll. 46 *seq.*; ii. 23.

⁷ Hicks, no. 101; Michel, 86; Rangabé, 381, 381b.

syntaxis (σύνταξις),¹ a contribution, as devised by Callistratus; and, further, the *εἰκοστή* of the earlier league was reintroduced. Again, the independence of the allies was impaired,—at least, so far as the judicial administration was concerned. The Athenian tribunals seem to have frequently exercised jurisdiction over various offences committed in the allied States. They acted, in many instances, as final courts of appeal, as, for example, from the recorded judgments pronounced in Ceos. In the case of Naxos, subjugated in 376 B.C., a treaty specifically stipulated that Athens should be the πόλις ἑκκλητός, the place where appeals against Naxian decisions should be tried,—that is, of course, in those suits where right of appeal was admitted (ἐφέσιμοι δίκαι). The treaties which had been entered into in the case of the first league with regard to the jurisdiction and proceedings in commercial cases were now renewed by Athens with several States, such as, for example, Chios and Phaselis.² Eventually, also, the practice of establishing cleruchies was re-adopted, and the right of maintaining garrisons in the territory of the allies was again asserted.

Federal
Council—
procedure, etc.

The Federal Council, consisting of representatives appointed by the allies, really represented the interests of the latter, on the one hand, in so far as their relationships to Athens were concerned, and, on the other, in matters concerning the policy and organization of the league as a whole. Though each State had one vote, yet it is scarcely to be imagined that Athens would tolerate or acquiesce in a majority of votes prevailing over her own counsels, especially so as the greater part of the votes represented small and comparatively unimportant communities. The council meeting in Athens would be constantly face to face with the local Ecclesia. The foreign deputies would undoubtedly be impressed by Athenian institutions and formal pro-

¹ Cf. Harpocration, *s.v.* σύνταξις.

² Gilbert, *Gr. Alter.* pp. 489-491; Eng. tr. p. 435.

cedure, and influenced by the city's traditions and ideals; so that, partly through such subconscious influences, and partly through the dialectic subtlety and persuasive force of the Athenians—not to mention local political machinations and all kinds of extra-official resources—the members of the Council would in spite of themselves eliminate their preconceptions and tend to submit to the representations set forth by the head of the confederacy, particularly so in view of the recognition of the admitted community of interests. An example of this predominating will of Athens is furnished by the proceedings relative to the peace of Philocrates, entered into with Philip (346 B.C.), when the federal envoys were obliged to give way, though, in this case, they really differed from Athens and were opposed to the treaty.

The Federal Council was merely a deliberative assembly. After due discussion of any matter under consideration,—it drafted an ordinance, or resolution (*δόγμα*), and sent it up to the Athenian Council (the *βουλή*). If not approved there, an amendment or counter-proposal (*προβούλευμα*) was drawn up by the *Boulé*, and forwarded along with the original *dogma* to the Athenian Assembly (the *Ἐκκλησία*). In either case the final decision lay with the *Ecclesia*, which alone was empowered to convert a proposal into a law (*βούλευμα*). In this way the Federal Council was invited to express its opinion by the formal *dogma* in matters relating to the declaration of war, the conclusion of peace, the formation of alliances,¹ and in foreign affairs generally. Occasionally its members ratified treaties by the solemn oath,² and despatched envoys on diplomatic legations along with the ordinary Athenian ambassadors. A *dogma* appears likewise to have been customary to sanction the stationing of an Athenian garrison in

The Federal Council—a deliberative assembly.

¹ Cf. Hicks, 108; Michel, 90.

² *Corp. inscrip. Att.* ii. 51; Hicks, 108; Michel, 90.—*Corp. inscrip. Att.* 57b; Hicks, 119; Michel, 10.

the territory of an allied State,¹ or for the appropriation of the common funds of the league for some extraordinary purpose.² Finally, apart from its share in these political functions, the Federal Council was vested with competence as a Court of Justice for the hearing of certain offences against the fundamental objects of the Confederacy, and for the decision of various other questions of a kindred character, as, for example, in a recorded case in which the Federal Council ordered the confiscation of property acquired by an Athenian in the territory of the allies.³

Certain judicial functions.

Now as to the Peloponnesian confederacy under Sparta.⁴ It consisted of most of the towns of the Peloponnese which, though under the hegemony of Lacedaemon, yet preserved their autonomy.⁵ Thus in the first treaty between Lacedaemon and Argos, 418 B.C. (as in the second treaty in the same year), the fifth clause stipulated that the cities in Peloponnesus, small as well as great, should all enjoy independence, in conformity with their ancestral laws.⁶ Whether the relationships were regulated by specific treaties, or were based on a mutual understanding and implicit acceptance of the general objects, is not evident. But most of the members had alleged some grievance or other against Athens. Thus the Corinthians were incensed because the Athenians had seemingly espoused the cause of the Corcyraeans, who had been at enmity with their mother

The Peloponnesian confederacy.

¹ *Corp. inscrip. Att. ii. 17 b*; Hicks, 102; Michel, 87 (as to the alliance between Athens and Chalcis in Euboea, 377 B.C.).—Hicks, 130 (decree as to garrison maintained in Andros, 356 B.C.).

² *Corp. inscrip. Att. ii. 62*; Rangabé, 393; Hicks, 130; Michel, 600.—*Corp. inscrip. Att. ii. 108, 117*.

³ *Corp. inscrip. Att. ii. 17, ll. 41 seq., ll. 51 seq.*; Michel, 86; Hicks, 101; Rangabé, 381, 381 b.

⁴ Cf. G. Busolt, *Die Lakedaimonier und ihre Bundesgenossen* (Leipzig, 1878); Müller, *Die Dorier*, i. pp. 179 seq.

⁵ Thuc. v. 77, 79.

⁶ Thuc. v. 77: τὰς δὲ πόλιας τὰς ἐν Πελοποννάσῳ, καὶ μικρὰς καὶ μεγάλας, αὐτονόμους εἶμεν πάσας κατὰ πάτρια.

country, Corinth. The Megarians complained that their commerce had been ruined by a recent decree of the Athenians excluding them from all ports within the Athenian jurisdiction. Aegina was aggrieved because Athens refused it autonomy. And so on with other States. In 432 B.C. an assembly of representatives from the allied towns met in Sparta. Apart from the numerous Peloponnesian confederates and the others just mentioned, there were the Boeotians, the Phocians, the Leucadians, the Ambraciots, the Anactorians, and the Opuntian Locrians.

The main object of the association was to preserve Peloponnesus from danger, and every member was to aid any other who happened to be attacked by any town that was not in the league. Thus in the above-mentioned treaty between Sparta and the Argives, the sixth clause was to the effect that if any one from without the Peloponnese should come with evil intent, the Peloponnesians were to take counsel together and repel the enemy.¹ It was at all events clear that no ally was to commence hostilities against any other ally fighting a common foe.² Should any disputes arise, they were to be settled by diplomatic methods, or by consulting the oracle at Delphi, or by arbitration. Thus in the second treaty of alliance between Lacedaemon and Argos, 418 B.C., it was expressly laid down in the first clause that, in case of controversy, they should submit to arbitration on fair and equal terms according to their ancient customs.³ If reference to an arbitral tribunal was refused, or its decision was not accepted, there was nothing to prevent recourse to war.⁴

Sparta decided, probably by separate agreements with

Object of the
Peloponnesian
association.

¹ Thuc. v. 77: αἱ δὲ καὶ τῶν ἐκτὸς Πελοποννάσου τις ἐπὶ τὰν Πελοπόννασον γὰρ ἢ ἐπὶ κακῶ, ἀλεξέμεναι ἀμοθεὶ βουλευσαμένους, ὅσα καὶ δικαιοτάτα δοκῆ τοῖς Πελοποννασίοις.

² Xenoph. *Hellen.* v. 4. 36, 37.

³ Thuc. v. 79: . . . ἐπὶ τοῖς ἴσοις καὶ ὁμοίοις δίκας διδόντας κατὰ πάτρια.—Cf. *ibid.* v. 31.

⁴ Thuc. iv. 134.

Sparta—and
the allied
forces.

the allies, what contingents were to be contributed by all, of which the chief command was taken by the Lacedaemonians. Subsequently, however, by a decree of the Federal Council, any State was enabled to commute active service for a money payment. In the case of naval expeditions, maritime towns were obliged to supply vessels, whilst the inland States could send proportionate sums to the common treasury at Sparta. It appears there were no regular taxes analogous to those imposed in the Athenian leagues.

The Federal Council was summoned by Sparta,¹ where the representatives usually assembled. Each State was entitled to one vote; and the decision of the majority was binding on all.² Sparta's counsels did not always prevail to the extent of rendering nugatory those of the other members; we find that on more than one occasion the ultimate resolution was contrary to the persuasions of the leading State.³ The Council had competence in determining questions relating to the establishment of peace, or to the prosecution of war; though, in the case of an unexpected attack on the Peloponnese, Sparta was permitted to call out the confederate forces without waiting for a decree of the council. Like Athens in the case of the Delian confederacies, Sparta took the chief part not only in the field, but in the common deliberations, and in the shaping of the policy. Her ephors presided over the federal assembly.

Other Greek
leagues.

A few words may be added here on one or two other leagues that had been established in Greece.

The Achaean
league.

In Achaea⁴ a league had long existed—largely for

¹ Cf. Herodot. v. 91-95.

² Thuc. i. 119, 125; v. 30: . . . εἰρημένον κύριον εἶναι ὅτι ἂν τὸ πλῆθος τῶν ξυμμάχων ψηφίσηται, ἣν μή τι θεῶν ἢ ἡρώων κώλυμα ᾖ.

³ Cf. Herodot. v. 93.

⁴ See G. de Sainte-Croix, *Des anciens gouvernemens fédératifs* (Paris, 1798); E. Helwing, *Geschichte des achäischen Bundes, nach den Quellen dargestellt* (Lemgo, 1829); E. A. Freeman, *History of federal government*

religious purposes—between the twelve principal cities of that country. After its suppression by the Macedonians, these towns were subjected to the oppressive measures of Antigonus Gonatas, and, in consequence, they began to coalesce once more. On the withdrawal of Antigonus from Greece, a new Achaean league of a political character was established (about 251 B.C.), mainly owing to the efforts of Aratus of Sicyon. Questions of war, peace, and alliances were decided by a general assembly (designated variously *συνέδριον*, *σύγκλητος*, *ἐκκλησία*, *ἀγορά*) which consisted of all Achaeans of the age of thirty or more, and included the representative senate, the *βουλή*, another senate, the *γερουσία* (a special ‘council of elders’), the magistrates, and the people. It met twice a year in a sacred grove near Aegium. It enjoyed complete sovereignty in foreign relationships, in regard to matters affecting the league as a whole. No single constituent State could, on its own authority, make war on, or conclude peace with, foreign powers, or conduct diplomatic proceedings by the agency of ambassadors. Indeed the organization of the Achaean confederacy was so perfect (thanks to the absence of any greatly preponderating State and excessive political ambition), that it has been designated a real national government,—a *Bundesstaat* (or *Föderativstaat*), and not merely a *Staatenbund*.¹ It possessed, of course, the right to elect the officers of the confederacy, the chief of whom being the *στρατηγός*, the commander-in-chief, who performed civil as well as military functions, the *γραμματεὺς*, the secretary, and a council of ten magistrates, the *demiourgoi*.² In 245 B.C., Aratus was

in Greece and Italy (London, 1893); M. Dubois, *Les ligues étolienne et achéenne. Leur histoire et leurs institutions. Nature et durée de leur antagonisme* (*Bibliothèque des écoles françaises d’Athènes et de Rome*, 1885).

¹ For example, Helwing, *op. cit.* p. 237, says: “Aus der obigen Darstellung scheint hervorzugehen dass die achäische Eidgenossenschaft nicht, wie wohl geschehen, als ein Staatenbund anzusehen sey, sondern dass sie vielmehr die Benennung eines Bundesstaats verdiene.”—Cf. also Heffter, *Das Europäische Völkerrecht*, §§ 20, 21.

² Cf. Polyb. xxiv. 5. 16.

appointed *strategus*, and again two years later when he succeeded in wresting Corinth from the Macedonians, and gaining it for the league. It was followed by Troezen, Epidaurus, Hermione, and other cities; and ultimately the league included Athens, Salamis, Megara, Aegina, and all the Peloponnese, except Sparta, Elis, and a few of the Arcadian towns.

The Aetolian league.

The Aetolian league¹ was similarly an association of tribes. Its history is somewhat obscure; but it must have had a fixed constitution in the time of Philip and Alexander, seeing that Aristotle wrote a treatise on it. We find that it played an important part in the Lamian war (323-322 B.C.). After Alexander's death, the Aetolians conquered Locris, Phocis, Boeotia, and parts of Acarnania, Thessaly, and Epirus, and got both the Amphictyonic Council and the Delphian oracle in their power. In 220 B.C. they defeated the Achaeans, who soon entered into an alliance with Philip. The war which ensued between the two leagues is commonly designated the Social war (220-217 B.C.). Later the Aetolian league suffered various vicissitudes of fortune.

As to its constitution, there was a general council called the *Panaetolium* (Παναϊτώλιον),² which assembled every autumn,³ usually at Thermum, to elect the *strategus* and other officers. The details of the administration were attended to by a kind of permanent council, or executive committee, termed the *Apocleti* (οἱ Ἀπόκλητοι).⁴

Rights and duties of confederates.

In all these and similar confederacies, or alliances of a less comprehensive extent, the reciprocal rights and obligations of the members thereof were either explicitly

¹ See Dubois, *op. cit.* pp. 185 *seq.*

² Livy, xxxi. 29, speaks of the "concilium Aetolorum quod Panaetolium vocant"; and, again, in xxxi. 32, he mentions the "Panaetolicum concilium."

³ Strabo, x. 3. 2.

⁴ Polyb. xx. 1. 1.—Cf. Livy, xxxvi. 29: "Quum in concilio delectorum quos Apocletos vocant. . . ."

laid down in the special treaties respectively entered into between them, or were understood as following by a necessary and immediate implication from the avowed objects of the union. Of course, infractions were not by any means infrequent, but the principles were none the less recognized, and often forcibly and drastically insisted on. Thus the confederates were bound to help in war, and usually, as we have seen, by contingents or substituted contributions of a predetermined amount. Frequently this duty devolved also on the allies of the confederates, that is, of course, when they were not for any urgent reason specifically excluded from the league; though, as a general rule, express provisions on this matter were made in the major treaties. At the congress of Nicaea, the Aetolian ambassadors demanded the restoration by Philip of all the cities which had formerly been members of the Aetolian league. In reply, Philip pointed out that the Aetolians had not only plundered their enemies, but also their allies when at war with each other,—and even without a formal decree of the people; that there seemed to be in their eyes no clearly defined line of demarcation between hostility and friendship. How then, exclaimed he, could they have any right to blame him if, as an ally of Prusias, he had acted in support of his own allies against the Ciani, who had been allied to the Aetolians?¹

The federal States or allies were prohibited from concluding treaties with the common enemy, or from violating their engagement by establishing relationships with another State, even under pressure of an urgent cause. When Cleomenes was blockading the Isthmus, the Megarians, who had been members of the Achaean league, finding themselves cut off from the Achaeans, joined the Boeotians with the consent of the former. Discovering, however, that Boeotia was in a disorganized condition, and disapproving, moreover, of its constitu-

As to
conclusion of
treaties.

¹ Polyb. xviii. 5 : πόθεν οὖν ἕξεστι τούτοις ἐγκαλεῖν νῦν, εἰ φίλος ὑπάρχων Αἰτωλοῖς ἐγώ, Προυσίου δὲ σύμμαχος, ἔπραξα τι κατὰ Κιανῶν, βοηθῶν τοῖς αὐτοῦ συμμάχοις;

tion, Megara again joined the Achaeans, whereupon the Boeotians made an attack upon the city.¹ When assistance was proffered to one State, and for reasons of political interest was transferred to an adversary or to a rebel, such act was esteemed a piece of deliberate treachery. During the decline of Sparta, the veteran Agesilaus hoped to resuscitate his country by expeditions to the East. He proceeded with his mercenaries to Egypt to assist the king, Tachos, in his revolt against Persia; but in the absence of the king his cousin, Nectanebis, rose and caused himself to be proclaimed king of Egypt. Agesilaus abandoned Tachos, and joined the usurper, "making the interests of his country," as Plutarch says, "the pretext for his extraordinary conduct, which we can hardly call anything better than treachery."²

Right to
abandon
alliances.

In certain cases of extreme necessity and vital State interest, such as self-preservation, ancient States claimed the right to abandon alliances. Thus, Polybius is at pains to determine whether Aristaenus, in causing the Achaeans to renounce their alliance with Philip and join that of Rome, was a wise opportunist, or a traitor in the strict sense of the term. It is difficult, he says, to state exactly who is to be regarded, under certain circumstances, as a real traitor. Obviously not all those who, at a time of tranquillity, make compacts with sovereigns can be considered such off hand; nor, again, those who at a time of danger withdraw their country from existing friendships and alliances, and transfer it to others. For such individuals have frequently been the authors of manifold advantages to their own States.³ The historian

Polybius on
opportunism
and treachery.

¹ Polyb. xx. 6.

² Plut. *Ages.* 37: οὕτω δὴ λαβὼν τοὺς μισθοφόρους ὁ Ἀγησίλαος ἀπὸ τοῦ Τάχου μετέστη πρὸς τὸν Νεκτάναβιν, ἀτόπον καὶ ἀλλοκότου πράγματος παρακαλύμματι τῷ συμφέροντι τῆς πατρίδος χρησάμενος, ἐπεὶ ταύτης γε τῆς προφάσεως ἀφαιρεθείσης τὸ δικαιοῦτατον ὄνομα τῆς πράξεως ἦν προδοσία.

³ Polyb. xviii. 13: τίνα γὰρ ὡς ἀληθῶς προδότην δεῖ νομίζειν οὐ ράδιον ἀποφῆνασθαι. δῆλον γὰρ ὡς οὔτε τοὺς ἐξ ἀκεραίου συντιθε-

gives an example in connection with the circumstances under consideration. If Aristaenus, he argues, had not at this time opportunely caused the Achaeans to give up their alliance with Philip and unite themselves to Rome, it is clear that the entire league would have suffered utter destruction. But, as it was, this man and this policy were avowedly the means not only of procuring at the time the safety of individual Achaeans, but also the aggrandizement of the confederacy as a whole. And consequently he was not regarded as a traitor, but, on the contrary, was universally honoured as a benefactor and saviour of the country. Hence, Polybius infers that such a principle of conduct would be perfectly legitimate in the case of all others who might be obliged to adapt their policy and measures to the necessities of the hour.¹ Admitting the validity of this point of view, he continues, Demosthenes, admirable as he is in many respects, might well be censured for having rashly and indiscriminately hurled a bitter accusation against the most illustrious of the Greeks.² For he asserts that in Arcadia, Cercidas, Hieronymus, and Eucampidas were traitors to Greece for entering into alliance with Philip; in Messene, the sons of Philiades, Neon and Thraylochus; in Argos, Mystis, Teledamus, one Mnaseas; in Thessaly, Daochus and Cineas; in Boeotia, Theogeiton and Timolas; and many more besides being put in the same category. And yet, insists Polybius, all these men, especially those of Arcadia and Messene, had obvious and weighty reasons to advance in vindication of their

His criticism of Demosthenes.

μένους τῶν ἀνδρῶν πρὸς τινας, βασιλεῖς ἢ δυνάστας κοινωνίαν πραγμάτων εὐθέως προδότας νομιστέον, οὔτε τοὺς κατὰ τὰς περιστάσεις μετατιθέντας τὰς αὐτῶν πατρίδας ἀπὸ τῶν ὑποκειμένων πρὸς ἑτέρας φιλίας καὶ συμμαχίας, οὐδὲ τούτους. πολλοῦ γε δεῖ. ἐπεὶ τοι γε πολλάκις οἱ τοιοῦτοι τῶν μεγίστων ἀγαθῶν γεγονάσιν αἴτιοι, ταῖς ἰδίαις πατρίσιν.

¹ *Ibid.*: ὁ δ' αὐτὸς ἀν εἷη λόγος καὶ περὶ τῶν ἄλλων, ὅσοι κατὰ τὰς τῶν καιρῶν περιτάσεις τὰ παραπλήσια τούτοις πολιτεύονται καὶ πράττουσιν.

² Cf. *De corona*, 43, 48, 295.

conduct.¹ For it was by their bringing Philip into the Peloponnese and humbling the Lacedaemonians that these men, on the one hand, enabled all its inhabitants to breathe again and conceive the idea of liberty ; and, on the other, by recovering their cities and territory, which the Lacedaemonians had captured from the Messenians, Megalopolitans, Tegeans, and Argives, notoriously raised the fortunes of their own countries.² In return for this they were obliged to refrain from making war on Philip and the Macedonians. Now had they done all this for merely personal reasons or base self-seeking, or even from a purely party spirit, they would have well merited to be branded as traitors.³ But if, while being faithful in their duty to their countries, they yet differed in their judgments of politics, and did not consider their interests to be the same as those of Athens, then Demosthenes is scarcely justified in stigmatizing them, on that account, as traitors. "The man who measures everything by the interests of his own particular State, and imagines that all the Greeks ought to have their eyes fixed upon Athens, on the pain of being styled traitors, seems to me to be ill-informed, and to be labouring under a strange delusion,"⁴—especially so as the course which events in Greece took at the time has testified to the wisdom, not of Demosthenes,

¹ xviii. 14 : . . . καίτοι γε πάντων μὲν τῶν προειρημένων ἀνδρῶν πολὺν ἔχόντων λόγον καὶ φαινόμενον ὑπὲρ τῶν καθ' αὐτοὺς δικαίων, πλείστον δὲ τῶν ἐξ Ἀρκαδίας καὶ Μεσσήνης.

² That is 338 B.C. after the battle of Chaeronea. Polybius' argument is, of course, an *ex post facto* one ; and one may nevertheless urge, as is suggested by Shuckburgh, *The Histories of Polybius*, vol. ii. p. 213, note (to whose translation I am here and in other places indebted), that if Demosthenes' advice had been carried into effect, these States might have been liberated from Spartan tyranny without necessarily falling under the subjection of Macedon.

³ Cf. Polyb. xviii. 15.

⁴ *Ibid.* xviii. 14 : ὁ δὲ πάντα μετρῶν πρὸς τὸ τῆς ἰδίας πατρίδος συμφέρον, καὶ πάντας ἡγούμενος δεῖν τοὺς Ἕλληνας ἀποβλέπειν πρὸς Ἀθηναίους, εἰ δὲ μή, προδότας ἀποκαλῶν, ἀνογεῖν μοι δοκεῖ καὶ πολὺ παραπαίειν τῆς ἀληθείας. . . .

but of the men above mentioned ; for Athens, by her opposition to Philip, suffered the crushing defeat at Chaeronea.

In ancient Italy there were institutions analogous to the Greek amphictyonies and religious associations.¹ Later we find confederacies² and unions founded as much for political reasons as for the practice of common worship. The conception of the underlying *fides* added greatly to the solemnity of the transactions in establishing these alliances, and to the recognition of their intrinsic force and binding character.³ Not long after the expulsion of the kings, in 492 or 493 B.C., the Latin confederation (of whose earlier history little is known) consisting of thirty cities entered into a league with Rome⁴ on a basis of equality. Dionysius assimilates the treaty to a symmarchy (*συμμαχία*), and isopolitical arrangement (*ισοπολιτεία*) after the fashion of Hellenic practice. The record of this treaty, which existed at Rome on a brazen pillar down to the time of Cicero,⁵ contained the name of Spurius Cassius as the consul who concluded it, and hence it is sometimes termed the 'foedus Cassianum.' There were two reasons for the formation of this alliance; in the first place, the Roman patricians were desirous of securing the assistance of the Latins against their own plebeians, and, secondly, the contracting parties were anxious to protect their territories more effectively from the menacing encroachments of their flourishing neighbours in the south, the Aequians and the Volscians. The thirty cities of the Latin association were at no great distance from Rome, and are supposed to have

Confederations and alliances in Rome.

Alliance between Rome and the Latin league.

¹ Cf. Varro, vi. 25; "Latinae feriae a Latinis populis quibus ex sacris carnem petere ius fuit cum Romanis."—See Livy, v. 1; xli. 16.

² J. Beloch, *Der italische Bund unter Roms Hegemonie* (Leipzig, 1880).

³ On *fides* and its influence on international relationships, see vol. i. pp. 391 *seq.*

⁴ Cf. Livy, ii. 53; viii. 2, 4; Dion. Hal. vi. 21; viii. 70-77.

⁵ Cic. *Pro Balbo*, 23, 24.—Cf. Livy, ii. 23.

been the following :¹ Ardea, Aricia, Bovillae, Bubentum, Corniculum, Carventum, Circeii, Cora, Corbio, Corioli, Fortuna (or Foretii), Gabii, Lanuvium, Laurentum, Lavici, Lavinium, Nomentum, Norba, Pedum, Praeneste, Querquetulum, Satricum, Scaptia, Setia, Tellena, Tibur, Toleria, Tricrinum, Tusculum, and Velitrae. Between these cities and the Romans a perpetual alliance, as related by Dionysius, was established to the following effect :—²

‘That there shall be peace between the Romans and all the Latin cities so long as the heavens and the earth shall remain in the same position.

‘That they shall not make war nor cause war to be made against each other, nor permit each other’s enemies to pass through their respective territories.

‘That in case of attack they shall aid each other with all their might, and all plunder and booty captured by their allied forces shall be shared equally between them.

‘That disputes arising out of private contracts between their respective citizens shall be determined within ten days by the tribunal of the city where the contracts in question were entered into.³

‘That nothing shall be added to this compact, and nothing taken away without the mutual consent of the contracting parties.’

¹This list is based on Dion. Hal. v. 61 (Ed. Reiske), together with Niebuhr’s emendations.

²Dion. Hal. vi. 95.—Cf. Liv. ii. 33. The statement of Dionysius is as follows : Ἦν δὲ τὰ γραφέντα ἐν ταῖς συνθήκαις τοιάδε· Ῥωμαίοις καὶ ταῖς Λατίνων πόλεσιν ἀπάσαις εἰρήνην πρὸς ἀλλήλους ἔστω, μέχρις ἂν οὐρανός τε καὶ γῆ τὴν αὐτὴν στάσιν ἔχωσι· καὶ μήτε αὐτοὶ πολεμείτωσαν πρὸς ἀλλήλους, μήτε ἄλλοθεν πολεμίους ἐπαγέτωσαν, μήτε τοῖς ἐπιφέρουσι πόλεμον ὁδοὺς παρεχέτωσαν ἀσφαλεῖς· βοηθείτωσάν τε τοῖς, πολεμουμένοις ἀπάσῃ δυνάμει, λαφύρων τε καὶ λείας τῆς ἐκ πολέμων κοινῶν τὸ ἴσον λαχχανέτωσαν μέρος ἑκάτεροι· τῶν τε ἰδιωτικῶν συμβολαίων αἱ κρίσεις ἐν ἡμέραις γιγνέσθωσαν δέκα παρ’ οἷς ἂν γένηται τὸ συμβόλαιον. ταῖς δὲ συνθήκαις ταύταις μηδὲν ἐξέστω προσθεῖναι μηδὲ ἀφελεῖν ἀπ’ αὐτῶν, ὅ τι ἂν μὴ Ῥωμαίοις τε καὶ Λατίνοις ἅπασι δοκῇ.

³On the interchange of national rights, and the competence of courts with regard to contracts between subjects of different States, see vol. i. pp. 295 *seq.*

Terms of the convention.

Lex loci contractus.

It appears, further, from a work of Cincius¹ (who lived in the time of the second Punic war), quoted by Festus,² that there was an additional provision of importance in the establishment of this confederacy, namely:

‘That the command of the allied armies shall be ✓ exercised by the Roman and Latin generals alternately.’

At about 485 B.C. the same Spurius Cassius entered into a similar alliance with the Hernicans, a Sabine people, whose territory was situated south-east of Praeneste, and not far from Rome. They probably possessed some sixteen cities, of which the only names now known to us are Anagnia, Alatrium, Ferentinum, and Verulae. Like the Latins they had been the dependent allies of Rome under the last Tarquinius; but on the establishment of the Roman commonwealth they, too, severed their relationships with Rome, and now joined the league on more favourable terms for the purpose of mutual protection against the aggressive Aequians and Volscians. An important point to notice in this case is that the confederacy was, by the admission of the new members, extended

✓ Alliance
between Rome
and the
Hernicans.

¹ *De consulum potestate.*

² *Praetor ad portam*: “Cincius ait Albanos rerum potitos usque ad Tullum regem: Alba deinde diruta usque ad P. Decium Murem cos. populos Latinos ad caput Ferentinae, quod est sub monte Albano, consulere solitos, et imperium communi consilio administrare. Itaque quo anno Romanos imperatores ad exercitum mittere oporteret iussu nominis Latini, complures nostros in Capitolio a sole oriente auspiciis operam dare solitos.”—With regard to Cincius, Arnold says: “His statement which bears on the face of it a character of authenticity, is quite in agreement with what Dionysius reports of the treaty itself, and only gives an additional proof of the systematic falsehood of the Roman annals in their accounts of the relations of Rome with foreigners.” (T. Arnold, *History of Rome*, 3 vols. (London, 1871), vol. i. p. 127, note 4.)

Of course the expression ‘quo anno’ in the above passage does not necessarily warrant the conclusion that the Roman and Latin generals enjoyed the supreme command of the combined forces every other year; but it is highly probable that such was the arrangement until the accession of the Hernicans to the league, when the period of the command was limited to one year in three.

beyond merely ethnic limits. Amongst the provisions of the treaty,¹ there was a clause securing to the Hernicans an equal portion, that is one-third, of all lands taken by the confederate armies.²

Rights and duties of Roman confederates and allies.

From these typical examples of alliances (that is, at least, those concluded in the earlier history of Rome), we may realize what were considered to be the most important rights and obligations of confederates and other allies in their relationships with Rome. Each member retained in form its own legal system; for before the Social war, Latin law was not necessarily the same as that of Rome. Ultimately, however, private law became in form as in matter substantially the same throughout all Latium. No subject of any of the constituent States could be enslaved within the territory of the league. Thus, as an application of this principle, the law of the XII. Tables provided that if a creditor wanted to sell his insolvent debtor, he must be taken and sold beyond the boundary of the Tiber. Again, in the second treaty between Rome and Carthage³ it was stipulated that if any citizen of a State allied to Rome be taken prisoner by the Carthaginians, he should regain his freedom on entering a Roman seaport. Any Latin was entitled to settle anywhere within the limits of the confederacy. The Romano-Latin confederates retained their sovereignty and independence; whilst the

¹ Dion. Hal. viii. 69, 72, 74.

² In reference to this clause Livy says: "Cum Hernicis foedus ictum, agri partes duae ademptae" (ii. 41),—that by the treaty the Hernicans were deprived of two-thirds of their own land,—whence, it is evident, Livy followed a Roman annalist whose strikingly inaccurate statement was either due to gross carelessness, or to a perverted sense of patriotism and *a priori* assumption of Roman predominance and unrestrained dictation of terms. At this period, at least, Rome did not enjoy and could not claim anything like an overwhelming preponderance in international relationships. It may be said, in general, that the transactions between Rome and alien communities were on a more equal footing than would appear from the exaggerated or suppressed accounts of jealous partisans.

³ See *infra*, chap. xvii.

league of the thirty communities as such preserved also its own autonomy. There appears to have been no prohibition as to the liberty of either Rome or Latium to undertake on its own account an aggressive war; and the Latin federal council—the hegemony of Rome notwithstanding—very probably took part in deliberations regarding the commencement of war or the conclusion of peace by the combined league.¹ In the later constitution of the league, however, Rome's ascendancy was more firmly established. The Latin members were deprived of the right to make war and treaties with foreign nations. The supreme command of the combined army was exercised exclusively by Rome, and the staff-officers of the various contingents were therefore appointed by the Roman commander-in-chief.²

In 340 B.C. all the Latin cities as well as the Campanians revolted against Rome. The Romans subsequently gained a decisive victory near Tripanum, and the Latin league was thus dissolved. It was transformed from an independent political confederacy to a religious festal association. Separate perpetual alliances between Rome and the several towns began to be made.

Dissolution
of the
confederacy.

In general, in the later history as in the earlier, when two States concluded a treaty of alliance, their existing confederates were *ipso facto* included therein,—unless it was expressly stipulated to the contrary—and were often mentioned by name.³ Thus in the first treaty between Rome and Carthage (509-508 B.C.) it was agreed that there should be friendship between the Romans and their allies on the one part, and the Carthaginians and their allies, on the other;⁴ and in a treaty of some two centuries later between the same parties, the Carthaginians specially added the Tyrians

Various rights
and duties of
allies in
general.

Inclusion of
the allies of the
principal
signatories.

¹ Cf. Mommsen, *Römische Geschichte*, vol. i. bk. i. chap. vii.

² Cf. Mommsen, *ibid.* bk. ii. chap. v.

³ Cf. Polyb. iii. 21. 5.

⁴ Polyb. iii. 22 : ἐπὶ τοῖσδε φιλίαν εἶναι Ῥωμαίοις καὶ τοῖς Ῥωμαίων συμμάχοις καὶ Καρχηδονίοις καὶ τοῖς Καρχηδονίων συμμάχοις.—For the entire treaty, see *infra*, chap. xvii.

and the township of Utica ;¹ and, again, in a further treaty between the same (241 B.C.), it was laid down that the allies of neither of the parties should be attacked by the other.²

Inclusion of
future
confederates.

In many cases, also, we find provision made for the inclusion into the alliance of future confederates of the contracting parties. For example, in the engagement entered into between Hannibal and Philip V. of Macedon (215 B.C.), the Carthaginians undertook to give Philip and his allies their own support, that of all their existing allies and subjects, and also of all such others in Italy as would hereafter become their allies.³ Similarly, the Macedonians engaged to support the Carthaginians, and their allied cities together with their future confederates in Italy.⁴ Where, however, no such specific provision was made, it was a controverted question whether the conditions of the treaty were applicable to any new allies. No doubt, in such uncertain circumstances considerations of utility and political interest would actuate States to adopt one view or the other, when manifestly in consonance with their particular aim for the time being. Polybius, who, on the whole, is representative, in questions of international law, of the most enlightened opinions current in his time (without, however, falling a prey to the high imaginings of philosophical idealists), held that future allies were bound by the conditions, on the ground that they contracted their union with open eyes, and threw in their fortunes or misfortunes with the States whose alliance they sought. Thus, in the

¹ Polyb. iii. 24 : ἐπὶ τοῖσδε φιλίαν εἶναι Ῥωμαίοις καὶ τοῖς Ῥωμαίων συμμάχοις καὶ Καρχηδονίων καὶ Τυρίων καὶ Ἴτυκαίων δήμῳ καὶ τοῖς τούτων συμμάχοις.

² Polyb. iii. 27 : τὴν ἀσφάλειαν ὑπάρχειν παρ' ἑκατέρων τοῖς ἑκατέρων συμμάχοις.

³ Polyb. vii. 9 : . . . καὶ ὑπὸ τῶν ἄλλων, ὅσοι ἂν γένωνται σύμμαχοι ἐν τοῖς κατ' Ἰταλίαν τόποις τούτοις.

⁴ *Ibid.* : καὶ πρὸς οὐστίνας ἡμῖν ἂν γένηται φιλία καὶ συμμαχία ἐν ταύτῃ τῇ χώρῃ.

disputes arising between Rome and Carthage after the first Punic war, the Romans alleged that in the treaty of 241 B.C. the clause stipulating that 'the allies of neither party should be attacked by the other' did not apply merely to the then existing allies, as the Carthaginians interpreted it; for in that case a provision would have been inserted to prohibit each party from making new alliances, or to exclude subsequent allies from the operation of the treaty; and since neither of these provisions was made, it was obvious that not only the then existing allies, but also all subsequent ones, were entitled to the enjoyment of mutual security.¹ Polybius remarks that this contention was quite reasonable,—ὁ δὴ καὶ πάντως ἂν εἰκὸς εἶναι δόξειεν:² for it is improbable, on the one hand, that they would have concluded a treaty depriving themselves of the power to establish such alliances as appeared to be to their advantage, and, on the other, it is equally unlikely that, had they entered into alliances of this kind, they would have denied support to their confederates. At all events, the clause that 'neither shall enlist soldiers in, or impose contributions on, the provinces or allies of the other, and all alike shall be secure of attack from the other side,' was justly regarded as referring also to subsequent allies.³

Sometimes it was agreed that the allies of each of the contracting parties should not be taken into alliance

Prohibitive stipulations as to allies.

¹ Polyb. iii. 29: καὶ μὴν ἐν ταῖς περὶ Σικελίας συνθήκαις ἢ ἔγγραπτον, καθάπερ κἀκεῖνοι φασίν, ὑπάρχειν τοῖς ἀμφοτέρων συμμάχοις τὴν παρ' ἑκατέρων ἀσφάλειαν, οὐκ αὐτοῖς μόνον τοῖς τότε συμμαχοῦσι, καθάπερ ἐποιούντο τὴν ἐκδοχὴν οἱ Καρχηδόνιοι· προσέκειτο γὰρ ἂν ἦτοι τὸ μὴ προσλαμβάνειν ἑτέρουσ συμμάχοις παρὰ τοὺς ὑπάρχοντας, ἢ τὸ μὴ παραλαμβάνεσθαι τοὺς ὕστερον προσληφθέντας τούτων τῶν συνθηκῶν. ὅτε δὲ τούτων οὐδέτερον ἐγράφη, προφανὲς ἦν ὅτι πᾶσι τοῖς ἑκατέρων συμμάχοις, καὶ τοῖς οὖσι τότε καὶ τοῖς μετὰ ταῦτα προσληφθησομένοις, τὴν παρ' ἀμφοῖν ἀσφάλειαν ἀεὶ δεόν ἦν ὑπάρχειν.

² *Ibid.*

³ Polyb. iii. 27.—On this question of subsequent allies, Grotius is not fully decided, though he appears to incline to the negative opinion.

with the other. Thus, in the above-mentioned treaty of 241 B.C. there was a stipulation to the effect that neither signatory should make any compact of friendship with the allies of the other,—*μηδὲ προσλαμβάνειν εἰς φιλίαν τοὺς ἀλλήλων συμμαχοὺς*.¹

Other obligations of confederates.

As to the more obvious obligations of confederates, they were bound expressly or impliedly to render adequate assistance in war;² very often a certain contingent of men, or vessels, or arms was prescribed in each case. Polybius, discussing the Roman constitution at the epoch of Cannae, 216 B.C., and speaking of the functions and powers of the consuls, says that it was within their competence to impose on the allies such levies as they thought proper,—*καὶ γὰρ ἐπιτάττει τοῖς συμμαχοῖς τὸ δοκοῦν . . .*³ And, again, when later the enrolment and composition of the Roman army are under his consideration, he remarks that the consuls made a requisition to the magistrates of the allied cities in Italy, declaring what allied troops were to serve, the number required, and the time and place at which the men selected should appear.⁴ Of course, the contingents or contributions expected were not fixed in an arbitrary manner, but were proportioned to the size and capabilities of the respective States.

As to treaties with the common enemy.

Further, allies were debarred from concluding treaties with the common enemy; but if such a treaty should be entered into, it was not to be made on such terms as would prevent the giving of due aid to the previously allied States. For example, in the treaty between Rome and Carthage, 279 B.C., there was a provision that if either the one party or the other contracted an alliance with Pyrrhus, they were both to do so on such conditions as not to preclude the one from affording

¹ Polyb. iii. 27.

² Diodor. xiv. 101.

³ Polyb. vi. 12.

⁴ Polyb. vi. 21: . . . οἱ τὰς ὑπάτους ἀρχὰς ἔχοντες παραγγέλλουσι τοῖς ἀρχουσι τοῖς ἀπὸ τῶν συμμαχίδων πόλεων τῶν ἐκ τῆς Ἰταλίας, ἐξ ὧν ἂν βούλωνται συστρατεύειν τοὺς συμμαχοὺς, διασαφούντες τὸ πλῆθος καὶ τὴν ἡμέραν καὶ τὸν τόπον εἰς ὃν δεήσει παρῆναι τοὺς κεκριμένους.—Cf. Liv. xxvi. 24.

assistance to the other, in case its territory should be attacked.¹ Again, some sixty years later, Hannibal having obtained possession of Clastidium by the treachery of a certain Brundisian, to whom the Romans had entrusted it, found subsequently that some Celts who lived in the fork of the Padus and the Trebia, while pretending to have made terms with him, were despatching messages at the same time to the Romans, in the hope that they would thus secure themselves from the injury of both sides.² Hannibal accordingly sent two thousand infantry along with the Celtic and Numidian cavalry with orders to lay waste their territory as a punishment for the breach of their obligations to him. Again, in the treaty between Hannibal and Philip V. of Macedon, it was agreed that they would be enemies to their respective enemies, excepting those with whom they were already in alliance; and Philip's ambassador specifically engaged to take the side of Carthage against Rome, whereas Hannibal undertook that, if he should eventually conquer Rome, he would insist on such terms as would prevent the Romans from making war on Philip. So that the seventh article was couched thus: 'If the Romans ever make war on you or on us, we will aid each other in such war, according to the need of either';³ and the eighth article: 'So also if any other nation whatever does so, always excepting kings, cities, and tribes with whom we have sworn agreements and friendships.'⁴

But if allies were bound to share in the burdens of war, they were also allowed to partake of the benefits

Rights of allies.

¹ Polyb. iii. 25: ἐὰν συμμαχίαν ποιῶνται πρὸς Πύρρον ἔγγραπτον ποιείσθωσαν ἀμφοτέροι, ἵνα ἐξῆ βοηθεῖν ἀλλήλοις ἐν τῇ τῶν πολεμουμένων χώρᾳ.

² *Ibid.* iii. 69: . . . καὶ πεπεισμένους τῷ τοιοῦτῳ τρόπῳ τὴν παρ' ἀμφοῖν ἀσφάλειαν αὐτοῖς ὑπάρξειν. . . .

³ Polyb. vii. 9: ἐὰν δὲ αἴρωνται Ῥωμαῖοι πρὸς ὑμᾶς πόλεμον ἢ πρὸς ὑμᾶς, βοηθήσομεν ἀλλήλοις εἰς τὸν πόλεμον, καθὼς ἂν ἐκατέρου ἢ χρεία.

⁴ *Ibid.*: ὁμοίως δὲ καὶ ἐάν τινες ἄλλοι χωρὶς βασιλέων καὶ πόλεων καὶ ἔθνων, πρὸς ἃ ἡμῖν εἰσιν ὄρκοι καὶ φιλίαι.—Cf. Liv. xxvi. 24.

of a 'dives victoria.'¹ In the plunder of Sicily, for example, the Romans shared equally with their Italian allies. And at the conclusion of the fourth Samnite war, the Campanians received as their portion of the spoil a considerable part of the coast of the gulf of Salerno, which had previously been in the possession of the Samnites;—this, at least, appears from Livy's statement that the Roman colonies of Salernum and Buxentum, established subsequent to the second Punic war, were settled on land which had belonged to Capua.² In a conference between Julius Caesar and the German chief, Ariovistus, the former stated that it was the custom of the Roman people to desire not only that its allies and friends should lose none of their property, but that they should also be advanced in influence, dignity, and honour.³ And, as Cicero asserted, Rome made war, for the sake of her allies, on Antiochus, Philip, the Aetolians, the Carthaginians, though she had not herself been injured or provoked by them.⁴ Hostilities against Antiochus and the Aetolians were commenced on behalf of the Rhodians, and Eumenes, king of Pergamus; against Philip, on account of the Athenians and others. The first Punic war (265-242 B.C.) was undertaken by Rome ostensibly to defend the people of Messana in Sicily; the second (218-202 B.C.) originated owing to Carthaginian aggressions on the Spanish city of Saguntum, which was an ally of Rome; in the third (146 B.C.), the Romans defended their ally Masinissa, king of Numidia.

¹ Liv. xxxvii. 53: "neminem digniorem esse ex sociis vestris, qui bello a vobis parta possideat."—xxxvii. 54: "est enim deum benignitate non gloriosa magis quam dives victoria vestra; . . . licet ergo vobis et praemiis belli ditare socios et non decedere instituto vestro."

² Liv. xxxiv. 45.

³ Caesar, *De bell. gall.* i. 43: "Populi Romani hanc esse consuetudinem, ut socios atque amicos non modo sui nihil deperdere, sed gratia, dignitate, honore auctiores velit esse . . ."

⁴ Cic. *Pro leg. Manil.* 6: ". . . si propter socios, nulla ipsi iniuria lacesciti, maiores nostri cum Antiocho, cum Philippo, cum Aetolis, cum Poenis bella gesserunt. . . ."

Gradually Rome, even in her earlier leagues, like Athens and Sparta in the case of their respective confederations, assumed the hegemony, and often arrogated to herself the right to decide questions of peace and of war, claimed the exclusive command of the combined forces, and appointed her own military officers and other administrative officials to be at the head of the common affairs. Booty captured in war was not always equally divided. Auspices came to be taken in the Capitol in the name of the entire league. Various additional encroachments were step by step made by Rome to such an extent that what was originally a *foedus aequum* degenerated virtually into a *foedus iniquum*, which was the usual preliminary to bringing about the complete subjection of her allies. A clear manifestation of this policy is discernible in the affairs consequent on the first Samnite war. In 343 B.C. the Campanians appealed to Rome and Latium,¹ between whom an alliance then subsisted, to protect them against the aggressions of the Samnites. The latter were soon after defeated, and in 340 B.C. Rome concluded a separate peace with them. The political position in Italy became thus greatly modified. The Latins, with whom Rome was still in alliance, continued the war against the Samnites; and, in accordance with the terms of their previous compact, they were entitled to call upon the Romans to help them. One can hardly wonder that Livy's account² is based on the assumption that the Latins were the *dependent* allies of Rome, and that the war was really due to a revolt on their part. But as it has already been shown, from the text of Dionysius and the authority of Cincius, the Latins enjoyed the right of making war, independently of any sanction

Assumption by Rome of the hegemony, which gradually developed into sovereignty.

¹ Livy, vii. 31, says that Capua solicited the support of the Romans alone, and obtained it in return for a surrender (*deditio*) to, and recognition of, the sovereignty of Rome. But this statement is probably untrue. In fact the whole account of the Samnite and Latin wars appears to have been grossly garbled by the Roman annalists.

² viii. 2.

from Rome; at least, no provision to the contrary appears.¹ In the internal affairs of Rome, there was a tendency in the aristocratic party to make concessions to the plebeians; but this spirit did not extend so readily to her foreign relationships. The concessions which had been granted to the Roman soldiers were denied to their Latin comrades.

A change in the relationships between Rome and Latium seemed inevitable at this juncture. At a general conference of the Latin cities, a proposal was made for establishing a more thorough union with Rome, and twelve commissioners were accordingly despatched to convey the resolution.² The substance of this was that the two parties should be completely united; that they should be governed jointly by two consuls or praetors, one to be chosen from each side; that there should be one senate consisting of an equal number of Roman and Latin members; that there should be a common sovereign assembly, in which Rome was not to preponderate in regard to the number of tribes; further, they were willing that Rome should be the capital of the combined nations, and the seat of the central government. And probably they also suggested that the Latin Jupiter of the Alban Mount should in all respects be regarded as equal to the Roman Jupiter of the Capitol; that the consuls of the united confederacy should, on taking up office, offer their vows to both, and, on return from victory in the field, that they should proceed in triumph to the temples of both without drawing any disparaging distinction.³ L. Annius of Setia, one of the Latin praetors and the principal delegate, set forth before the senate, assembled in the Capitol, this proposal. To accept these terms, however, was considered tantamount to a sacrifice of national independence and national pride, apart from the implication of sacrilege in permitting aliens to have access to the temple of Jupiter. Hence the proposition was

¹ See *supra*, p. 34.

² Liv. viii. 5.

³ Cf. Liv. xxi. 63; xxii. 1.

disdainfully rejected ; and T. Manlius Torquatus, one of the newly-elected consuls, remarked that if the senate were so regardless of its dignity as to receive the law from a man of Setia, he would come armed into the senate-house, and would plunge his sword into the body of the first Latin he saw there. Then turning to the image of Jupiter, he exclaimed : “Hear, O Jupiter, these impious proposals ! Hear ye them, O guardians of human and divine law ! Wilt thou, Jupiter, suffer to behold alien consuls and an alien senate within the sacred precincts of thy temple, as though thou wert thyself vanquished and made captive ?”¹

The Latin war eventually followed, and resulted in the submission of the cities of Latium ;—so that the Latin league was entirely broken up. The previous alliance established on a seemingly equal footing was converted into the vanquished party’s subjection to Rome. With regard to the cities of Latium in general, the policy of segregation was adopted by Rome ; in accordance with which it was laid down that henceforth there should not be any common meetings, assemblies, or councils for any two or more of the surrendered cities, and, moreover, that they should be in the position of aliens to one another, with no reciprocal rights of *connubium* and *commercium*.² Apart from this general policy, and from the point of view of the position of the cities with regard to Rome, each one appears to have been considered separately, and treated as considerations of justice or expediency determined.³ Some of the Latin towns, indeed, such as Tibur and Praeneste, were

Dissolution of
the Latin
league.

¹ Liv. viii. 5 : “Audi, Iuppiter, haec scelera, inquit, audite, Ius Fasque ; peregrinos consules et peregrinum senatum in tuo, Iuppiter, augurato templo captus atque ipse oppressus visurus es ?”

² Liv. viii. 14 : “Ceteris Latinis populis connubia commerciaque et concilia inter se ademerunt.”—Cf. Rome’s similar action in the case of the Hernicans, after their revolt, in the second Samnite war (Liv. ix. 43) ; and in that of the Macedonians after the battle of Pydna (Liv. xlv. 29).

³ *Ibid.*

accorded a certain independence, and were permitted to retain their own laws and magistrates. Roman garrisons occupied others, like Velitrae, under the name of colonies. A few, such as Aricia, Pedum, Nomentum, enjoyed an intermediate position, remaining in their own territory, and continuing their national usages, but under the control of a Roman prefect. The greater portion of the Latin population was admitted to a qualified Roman citizenship, being debarred from the political privileges inherent in the *ius suffragii*, but not from the *commercium* and *connubium*. Such was the origin of Latin citizenship, *Latium*, or *ius Latii*.¹

Origin of Latin citizenship.

Character of Rome's relationships with foreign States.

Relationships of alliance and of dependence.

Kinds of *foedera*.

Classification made by the Syrian ambassador.

It was remarked above that the *foedus aequum* tended invariably to be transformed into the *foedus iniquum*. It will be well, in this connection, to say here a few words on the relationships of Rome with foreign States in general. As has already been pointed out, the pacific relationships of Rome with other countries may be classified into those of alliance, including *amicitia*, *hospitium publicum*, *foedus*, *societas*; and those of dependence, including *municipium*, *colonia*, *provincia*. This is, of course, more of the nature of a theoretical division, seeing that in actual practice the *foedus* was susceptible to so many gradations as to be applicable to States in subjection to Rome, as well as to those enjoying complete independence and autonomy. And in this respect it is extremely important to bear in mind the profoundly modified—in some matters distinctly revolutionary—practices of later Rome in contrast to those which obtained in her earlier history. But, broadly speaking, we may distinguish, as the Romans themselves were in the habit of doing, three kinds of *foedera*,—the *foedus aequum*, the *foedus minus aequum*, and the *foedus iniquum*. Thus Livy relates that in 193 B.C. Menippus, the ambassador of Antiochus, in the course of an address to the senate, recognized this discrimination as insisted on by the Romans, and drew to this effect a

¹ On this subject, see vol. i. pp. 256 *seq.*

threefold distinction regarding international relationships in time of peace. There are three kinds of treaties, he observed, by which Kings and States contract bonds of friendship between each other:—One is when terms are dictated to a people vanquished in war,—for after all their possessions have been surrendered to the victor he has the sole power of judging and determining what portion of the property the conquered party shall hold, and of what they shall be deprived. The second is when parties equally matched in war conclude a treaty of peace and friendship in terms of equality,—for then demands are proposed, and restitution effected reciprocally, by means of a convention; and if, in consequence of the war, confusion has arisen with respect to any part of their property, the controversy is adjusted by reference either to ancient rights or to the mutual convenience of the parties. The third kind is where parties who have not been foes meet to establish a friendly union by a treaty of alliance,—in which case there is neither a dictation of, nor submission to, terms, but simply a mutual agreement.¹

But the Roman policy of making theoretical conceptions, and even previously applied distinctions, subservient to the general interests of the State, and to the particular necessity of each case, is shown in the way T. Quinctius Flamininus, ‘the father and deliverer of Greece,’ disregarded the distinctions of the Syrian envoy, and laid down two conditions without which Rome would never treat with Antiochus, namely, that the king of

Theoretical distinctions subordinated to practice.

¹ Liv. xxxiv. 57: “Esse autem tria genera foederum, quibus inter se paciscerentur amicitias civitates regesque: unum, quum bello victis dicerentur leges; ubi enim omnia ei, qui armis plus posset, dedita essent, quae ex iis habere victos, quibus multari eos velit, ipsius ius atque arbitrium esse; alterum, quum pares bello aequo foedere in pacem atque amicitiam venirent; tunc enim repeti reddique per conventionem res est, si quarum turbata bello possessio sit, eas aut ex formula iuris antiqui aut ex partibus utriusque commodo componi; tertium esse genus, quum, qui nunquam hostes fuerint, ad amicitiam sociali foedere inter se iungendam coeant; eos neque dicere neque accipere leges; id enim victoris et victi esse.”—Cf. *ibid.* xxxvii. 1 and 8.

Syria should agree to Rome's intervention in the political affairs of the towns of Asia, and to her establishment of alliances with them, in case he was not prepared to confine himself within the limits of Asia; and, on the other hand, if he objected to such intervention, that he should himself keep entirely out of Europe.¹ In any case the 'dignitas' and the 'utilitas' of the Roman people were always to be consulted, and proceedings conducted accordingly.²

The *foedus aequum*.

The *foedus aequum* constituted a defensive and offensive alliance, ostensibly on a basis of legal and political equality, of which the fundamental provision was the agreement to accept the same friends and enemies, "ut eosdem amicos atque inimicos foederati haberent." This arrangement implied the freedom, independence, and sovereignty of the foreign State with regard to Rome. Polybius often uses the word 'autonomy' (*αὐτονομία*) to express this condition, whereas a Latin writer employs such expressions as 'immunitas,' 'libertas,' 'legibus suis uti,' and the like.³ The word *ἐλευθερία* ('liberty') is also used as practically equivalent, though in Greek writers there is in it usually an implication of liberty in the sense of the condition of a democratic government.⁴ Thus the customary formula adopted by Polybius to express the granting of autonomy is, — *ἀφορήτους, ἀφορολογίτους, ἐλευθέρους ὄντας,*

¹ Liv. xxxiv. 58: "... unam, si nos nihil, quod ad urbes Asiae attinet, curare velit, ut et ipse omni Europa abstineat; alteram, si se ille Asiae finibus non contineat et in Europam transcendat, ut et Romanis ius sit Asiae civitatum amicitias et tueri, quas habeant, et novas complecti."

² *Ibid.*

³ Cf. Liv. xxxiii. 32. 5; xxxv. 46; xxxvii. 32; xxxviii. 39; xlv. 29, etc.

⁴ As to the relationships of *αὐτονομία* and *ἐλευθερία*, cf. Mommsen, *Röm. Staatsrecht*, vol. iii. p. 658, where he says: "Die *αὐτονομία* deckt sich insofern mit der *ἐλευθερία*, als die gleiche Rechtsstellung bei der *ἐλευθερία* von Seiten der souveränen Gewalt der Bürgerschaft, bei der *αὐτονομία* von der des eigenen Volksrechts aufgefasst wird und beide werden daher häufig combinirt."

πολιτείαις καὶ νόμοις χρωμένους τοῖς πατρίοις¹ (freedom from tribute or taxation, and enjoyment of their ancestral laws and institutions), whilst in Livy we find such terms as “liberos, immunes, suis legibus esse iubere Achaeos.”²

The *foedus minus aequum* conferred on Rome a certain measure of sovereignty with regard to the other contracting party,—at least, she acquired thereby a distinct preponderance or hegemony. This is shown by such a frequently recurring formula as ‘maiestatem populi Romani conservato,’ emphasizing the recognition by the other States of Roman ‘majesty,’ or supremacy. Proculus, distinguishing in the *Digest* between sovereignty and subjection, and pointing out that a State may enjoy full sovereignty though in alliance with Rome, yet makes use of the expression ‘maiestatem comiter conservaret’;³ at the same time he says nothing of the correlative obligation of Rome. Similarly, in the articles of peace concluded with the Aetolians, 191 B.C., the first clause is to the effect that the Aetolian peoples were to respect conscientiously the empire and majesty of Rome, “. . . imperium maiestatemque populi Romani gens Aetolorum conservato sine dolo malo.”⁴ Respecting formulas of this character Cicero offers the following explanation. The expression

The *foedus minus aequum*.

¹ Polyb. iv. 25. 7.

² Liv. xxxiii. 32. 5; and cf. the other passages, last cited, of Livy. Seneca, *De benef.* v. 16, makes use of similar phraseology: “Achaeis Rhodiis et plerisque urbibus claris ius integrum libertatemque cum immunitate reddiderat,” as does Caesar, *De bell. gall.* vii. 76: “civitatem eius immunem esse iusserat, iura legesque reddiderat.”

³ *Dig.* xlix. 15 (de captiv.), 7. 1: “Liber autem populus est is, qui nullius alterius populi potestati est subiectus: sive is foederatus est item, sive aequo foedere in amicitiam venit sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret, hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum; et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viri boni nobis praesunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est.”

⁴ Liv. xxxviii. 11.

'conservanto' (that is, they must aid in maintaining), he points out, which is used more often in statutes rather than in treaties, refers to one who commands, not to one who supplicates. And when there is an injunction that the 'dignity' of one of the parties is to be maintained, no mention being at the same time made of the other, that nation is, of course, placed in a higher rank and position, the dignity of which is safeguarded by the sanction of the treaty. Further, 'comiter' (a word which frequently accompanies 'conservanto') signifies not 'jointly' (like 'communiter'), according to the interpretation sometimes made by those who tried to extricate themselves from the obligations established by the engagement, but rather 'cordially.'¹

In the case of this class of treaties, the nations allied to Rome necessarily abandoned a portion of their sovereignty, if not as regards their internal affairs, at least in their foreign relationships; for their transactions of external diplomacy were virtually in the hands of the Romans. Thus they were not really 'populi liberi'; they exercised rather a semi-sovereignty, a 'dubia libertas.' They were gradually subjected more and more to Rome, so that their monarchs became practically agents of Roman supremacy, 'reges inservientes,'² or 'subreguli,' who were in some cases watched over, or actually supplanted by Roman *praefecti*, or *procuratores*.

The *foedus iniquum*.

The *foedus iniquum* established the complete dependence on Rome of the State contracting this kind of treaty, and usually contained some such expression as 'in dicione populi Romani.' Thus, about 317 B.C., in the course of the second Samnite war, the Teatians of Apulia, on account of intestine dissensions in their

¹ Cic. *Pro Balbo*, 16: "Primum verbi genus hoc 'conservanto,' quo magis in legibus quam in foederibus uti solemus, imperantis est, non precantis. Deinde, cum alterius populi maiestas conservari iubetur, de altero siletur, certe ille populus in superiore condicione causaque ponitur, cuius maiestas foederis sanctione defenditur... 'communiter' quidem certe non convenit."

² Tacit. *Hist.* ii. 81.

country, sued the Roman consuls for an alliance, engaging that peace would be observed towards the Romans throughout every part of Apulia. By pledging themselves to this promise they obtained the grant of an alliance, not on terms of equality, as Livy says, but on their submitting to the dominion of the Roman people.¹ Again, in 210 B.C. the plebeian tribune, Lucius Atilius, proposed to the people, on the recommendation of the senate, a bill in reference to the Campanians, Atellanians, Calatinians and Sabatinians who had surrendered to the proconsul Fulvius, and placed themselves under the authority and dominion of the Roman people.²

The allies in general—the *populi foederati*—and especially so those of the subordinate categories, owed fidelity and were obliged to pay homage to the senate or to the emperor, as the case may be, without being entitled to exact correlative legal duties on the part of Rome. When their internal autonomy was left intact, their external independence or sovereignty (equally described as *maiestas*³) was diminished or entirely taken away, so that Rome assured to herself a position not merely of nominal headship but of effective superiority by compelling them to have no other friends and no other enemies than those she herself had. The various States, when hard pressed, made these sacrifices in return for Rome's protection. Yet they were scarcely in the position of real protectorates. Rome shared

Position of
the 'populi
foederati.'

¹ Liv. ix. 20: "Id audacter spondendo impetravere, ut foedus daretur, neque ut aequo tamen foedere, sed ut in ditione populi Romani essent."

² Liv. xxvi. 33: "L. Atilius tribunus plebis ex auctoritate senatus plebem in haec verba rogavit: 'Omnes Campani, Atellani, Calatini, Sabatini, qui se dediderunt in arbitrium dicionemque populi Romani Fulvio proconsuli. . . .'"—Cf. also Liv. viii. 2; xli. 6; Polyb. xx. 9 and 10.

³ Cic. *De invent.* xlix. 15: "Maiestatem minuere est de dignitate, aut amplitudine, aut potestate populi, aut eorum quibus potestatem populus dedit, aliquid derogare."

their disputes and offered support rather in view of her own political interests than through any recognized obligation of a strictly juridical character. These States, more particularly where 'foedera iniqua' were understood, came to be controlled as a kind of *beneficium*, and even, on some occasions, as a life *beneficium*. Their territories were in the position of 'provinces,' and their right in the land was of the nature of a usufruct;¹ its property was claimed by the Romans, as is shown by their exaction of tribute or taxes,—the *tributum*, or the *vectigal*. In their relationships with Rome, they had no true international character, no intrinsic juridical personality. A modern French writer, M. Despagne, assimilates their condition to that of the Hindu princes under British supremacy,—“leur condition est comparable à celle des princes hindous sous la domination anglaise.”² The heads of such States—as, for example, Juba, one of the 'reges inservientes' of the class described by Tacitus³—differed but little from Roman proconsuls, inasmuch as they were made the mere instruments of the central authority, and the means of promoting imperial expansion. In a word, the policy of Rome (more markedly in her later history) was to extend protection to nations in return for their subordination,⁴ which eventually meant complete absorption. As Montesquieu points out, Rome first of all accustomed States to show obedience to her, whether they were free and independent, or afterwards in alliance with, or in subjection to, her; and this paved the way to the readier and more thorough attachment of their terri-

¹ Cf. Gaius, *Inst.* ii. 7: “Sed in provinciali solo placet plerisque solum religiosum non fieri, quia in eo solo dominium populi Romani est vel Caesaris, nos autem possessionem tantum vel usumfructum habere videmur.”

² F. Despagne, *Essai sur les protectorats* (Paris, 1896), p. 61.

³ *Hist.* ii. 81.

⁴ Cic. *De offic.* ii. 8: “Regum populorum nationum portus erat et refugium senatus. . . . Itaque illud patrociniū orbis terrae verius quam imperium poterat nominari.”

tories to her empire. “Remarquez . . . la conduite des Romains. Après la défaite d’Antiochus, ils étaient maîtres de l’Afrique, de l’Asie et de la Grèce, sans y avoir presque de villes en propre Il n’était pas temps encore de s’emparer des pays conquis. S’ils avaient gardé les villes prises à Philippe, ils auraient fait ouvrir les yeux aux Grecs ; si, après la seconde guerre punique, ou celle contre Antiochus, ils avaient pris des terres en Afrique ou en Asie, ils n’auraient pu conserver des conquêtes si peu solidement établies. Il fallait attendre que toutes les nations fussent accoutumées à obéir, comme libres et comme alliées, avant de leur commander comme sujettes, et qu’elles eussent été, se perdre peu à peu dans la république romaine.”¹

¹ *Considérations sur les causes de la grandeur des Romains et de leur décadence*, chap. vi. *in fin.*

CHAPTER XVII

TREATIES : DIFFERENT KINDS. ADDITIONAL EXAMPLES.—THE ROMAN *RECUPERATORES*

HAVING already considered the practice of concluding treaties in Greece and Rome, the various proceedings, indispensable formalities and ceremonial, the conception of the sacred and the positive sanctions involved, the establishment of confederations and general alliances, and the rights and duties of contracting parties, it will now be convenient to examine briefly a few representative compacts (more especially with regard to their subject matter), chosen from amongst the numerous recorded treaties, preserved either in the texts of ancient historians and other writers, or in epigraphic documents. The cases cited will further testify to the great diplomatic activity of the Hellenic and the Roman peoples, their tendency to bring about as far as possible a regularization of international or interstatal relationships, and to establish definite mutual understandings for facilitating commercial and other intercourse; they will, moreover, clearly indicate the general recognition of the interests of peace as being superior to those of war.

A. In Greece.

Treaty of
alliance
between
Elea and
Heraea,
588-572 B. C.

A treaty of alliance was entered into, about 588-572 B. C., between Elea and Heraea, two States in the Peloponnese, probably in view of the Persian invasion. The original text, engraved on a bronze tablet, is couched in the Doric dialect. It was discovered in

1813 by Sir William Gell near Olympia, and is now in the British Museum. It is one of the oldest extant documents relating to European diplomacy. The substance of the compact is to this effect :—

‘Treaty of the Eleans and Heraeans. Let there be an alliance for one hundred years, commencing from this year. Should there be need of words or action, let them unite for war as well as for other purposes. Let those who decline to do so pay a silver talent, as a fine, to the Olympian Zeus. Whosoever shall destroy this record, whether private person, magistrate, or town, shall be liable to the penalty herein prescribed.’¹

Alliance for a hundred years.

Record.

The treaty between Athens and Sparta, entered into 421 B.C. after the conclusion of the peace of Nicias, established an alliance for offensive and defensive purposes. In the peace of Nicias, Sparta had sacrificed the interests of her allies in favour of her own ; and hence it was regarded by them with jealousy and distrust. Four of the confederates, the Boeotians, the Corinthians, the Eleans, and the Megarians, refused to ratify it.² Then Sparta entered into the alliance, partly because of this circumstance, and partly because of the expiration of her Thirty Years’ Truce with Argos, as

Alliance between Athens and Sparta, 421 B.C.

¹Cf. Hicks, *Gr. hist. inscrip.* no. 9 ; C. T. Newton, *Collection of ancient Greek inscrip. in the Brit. Mus.* (Oxford, 1883), part ii. 157 ; Michel, *op. cit.* no. 1 ; *Corp. inscrip. Graec.* 11 ; Egger, *Traité public*, p. 27 ; R. von Scala, *Staatsverträge*, no. 27.

The following is the text of the treaty as given by Hicks :

‘Α Φράτρα τοῖρ Φαλείοις καὶ τοῖς Ἡρ-
 Φαῖοις. Συνμαχία κ’ εἶα ἑκατὸν Φέτεια.
 ἄρχοι δέ κα τοῖ. αἱ δέ τι δέοι, αἴτε Φέπος αἴτε Φ-
 ἄργον, συννεῖδάν κ’ ἀλάλοισ τά τ’ ἄλ’ καὶ πᾶ-
 ρ πολέμω. αἱ δέ μὰ συννεῖαν τάλαντόν κ’
 ἀργύρω ἀποτίνοιαν τῶι Δι’ Ὀλυμπίωι τοῖ κα-
 δαλημένοι λατρεῖόμενον. αἱ δέ τιρ τὰ γ-
 ράφεια ταῖ καδαλέοιτο, αἴτε Φέτας αἴτε τ-
 ελεστὰ αἴτε δᾶμος, ἐν τ’ ἐπιάρωι κ’ ἐνέχ-
 οῖτο τῶι ἴναυτ’ ἐγράμηνωι.

²Thuc. v. 22.

she feared a renewal of hostilities by the latter. The provisions are as follows¹ :—

Union against
common
enemy.

(1) “If an enemy invade the Lacedaemonian territory and harm the Lacedaemonians, the Athenians shall assist the Lacedaemonians in any way in which they can, and to the utmost of their power ; and if the enemy ravage their territory and depart, the offending city shall be the enemy of the Lacedaemonians and Athenians, and shall suffer at the hands of both of them, and neither city shall cease from war before the other. These things shall be performed honestly, and zealously, and sincerely.

(2) “If any enemy invade the Athenian territory and harm the Athenians, the Lacedaemonians shall assist them in any way which they can, and to the utmost of their power ; and if the enemy ravage their territory and depart, the offending city shall be the enemy of the Athenians and Lacedaemonians, and shall suffer at the hands of both of them, and neither city shall cease from war before the other. These things shall be performed honestly, and zealously, and sincerely.

Slaves.

(3) “If the slaves rebel, the Athenians shall aid the Lacedaemonians with all their might and to the utmost of their power.

Oath.

(4) “These provisions shall be sworn to on both sides by the same persons who swore to the former treaty. Every year the Lacedaemonians shall go to Athens at the Dionysia and renew the oath, and the Athenians shall go to Lacedaemon at the Hyacinthia and renew the oath. Both parties shall erect pillars, one in Lacedaemon at the temple of

¹Thuc. v. 23. (Jowett’s translation, which has been adopted in other cases where Thucydides is quoted at any length.)

Apollo in Amyclae, another at Athens in the Acropolis at the temple of Athene.

(5) "If the Lacedaemonians and Athenians agree that anything shall be added to or taken away from the treaty of alliance, whatever it be, this may be done without violation of their oaths."

Modification
of treaty.

In 420 B.C., some eight years before the dissolution of the first Athenian league,¹ Athens entered into a hundred years' alliance with the Argive confederacy. This is an interesting example of a convention in respect of the nature of the provisions laid down, and of diplomatic relationships in general. The text of the treaty is thus recorded by Thucydides² :—

Alliance
between
Athens and
the Argive
Confederacy,
420 B.C.

(1) "The Athenians and the Argives, Mantineans, and Eleans, on their own behalf and that of the allies over whom they severally rule, make a peace to continue for a hundred years both by sea and land, without fraud or hurt. The Argives, Eleans, Mantineans, and their allies shall not make war against the Athenians and the allies over whom they rule, and the Athenians and their allies shall not make war against the Argives, Eleans, Mantineans, and their allies, in any sort or manner.

Alliance for a
hundred years.

(2) "Athens, Argos, Elis, and Mantinea shall be allied for a hundred years on the following conditions :—If enemies invade

Union against
common
enemy.

¹ See *supra*, pp. 13 *seq.*

² Thuc. v. 47.—See Hicks, 69, for a fragment of an inscription (given only in uncials), found near the Dionysiac theatre in 1877. This marble tablet is of particular interest, as it offers a striking illustration of the documentary sources (the *Quellen*, as the Germans say) of historians like Thucydides. There are various discrepancies between the text of the latter and that of the inscription; but, so far as our present purpose is concerned, they are of no great consequence. See Jowett's note to Thuc. v. 47, in the second volume of the translation.—Cf. Von Scala (no. 87), who gives the full text of the treaty, and a systematic analysis of its substance.

the territory of the Athenians, the Argives, Eleans, and Mantineans shall go to Athens and render the Athenians any assistance which they may demand of them, in the most effectual manner, and to the utmost of their power. And if the enemy spoil their territory and depart, the offending city shall be an enemy to Argos, Mantinea, Elis, and Athens, and suffer at the hands of all these cities; and it shall not be lawful for any of them to make peace with the offending city, unless they have the consent of all the rest. And if enemies shall invade the territory of the Eleans or Argives or Mantineans, the Athenians shall go to Argos, Mantinea, or Elis, and render these cities any assistance which they may demand of them, in the most effectual manner, and to the utmost of their power. If an enemy spoil their territory and depart, the offending city shall be an enemy to Athens, Argos, Mantinea, and Elis, and shall suffer at the hands of all these cities; and it shall not be lawful for any of them to make peace with the offending city, unless they have the consent of all the rest.

Passage of
armed forces.

(3) "The confederates shall not allow armed men to pass through their own territory, or that of the allies over whom they generally rule or may rule, or to pass by sea, with hostile intent, unless all the cities have formally consented to their passage—that is to say, Athens, Argos, Mantinea, and Elis.

Mutual
provisioning.

(4) "The city which sends troops to help another shall supply them with provisions for thirty days, counting from the time of their arrival at the city which summons them; it shall also provide for them at their departure. But if the city which summons

the troops wishes to employ them for a longer time, it shall give them provisions at the rate of three Aeginetan obols¹ a day for heavy-armed and light-armed troops and for archers, and an Aeginetan drachma² for cavalry.

(5) "The city which sent for the troops shall have the command when the war is carried on in her territory. Or, if the allied cities agree to send out a joint expedition, then the command shall be equally shared among all the cities.

Supreme
command.

(6) "The Athenians shall swear to the peace on their own behalf and on that of their allies; the Argives, Mantineans, and Eleans, and their allies shall swear city by city. The oath shall be taken over full-grown victims and shall be that oath which in the countries of the several contracting parties is deemed the most binding. The form of oath shall be as follows:—

Administration
of oath.

"I will be true to the alliance, and will observe the agreement in all honesty and without fraud or hurt; I will not transgress it in any way or manner."

In addition to these clauses, provision was made for the ratification of the treaty,—the persons who were to take the oath, and those who were to administer it were specified in the case of each city, and the time was fixed for the mutual renewal of the oaths. The record of the convention was to be perpetuated by the customary inscription thereof on columns in certain temples named. Finally, it was agreed that the treaty might be modified, with the unanimous consent of the signatories, and that such modifications should have legal force.

Ratification.

Record.

Modification.

After the great battle of Mantinea, 418 B.C., first peace, then a fifty years' alliance were made between Sparta and Argos. A Lacedaemonian envoy, who was the

Alliance
between
Sparta and
Argos, 418 B.C.

¹ About 8d.

² About 1s. 4d.

*proxenus*¹ of the Argives, arrived in Argos, and offered them peace or war. After some discussion the Argives accepted the conditions of peace, as proposed by Sparta.²

“It seems good to the Lacedaemonian assembly to make an agreement with the Argives on the following terms:—

Hostages.

(1) “The Argives shall restore to the Orchomenians³ the youths, and to the Mae-nalians the men whom they hold as hostages, and to the Lacedaemonians⁴ the men who were deposited in Mantinea.

Evacuation.

(2) “They shall also evacuate Epidauria,⁵ and demolish the fortifications which they have erected there. If the Athenians refuse to evacuate Epidauria, they shall be enemies to the Argives and Lacedaemonians, and to the allies of the Lacedaemonians, and to the allies of the Argives.

Hostages.

(3) “If the Lacedaemonians have any youths belonging to any of the allies in their country, they shall restore them to their several cities.

Sacrifice.

(4) “Concerning the sacrifice to the god, the Epidaurians shall be permitted to take an oath which the Argives shall formally tender to them.

Independence.

(5) “The cities in Peloponnesus, both small and great, shall be all independent, according to their ancestral laws.

Union against common enemy.

(6) “If any one from without Peloponnesus comes against Peloponnesus with evil intent, the Peloponnesians shall take counsel together and shall repel the enemy;⁶ and the

¹ On the functions of the *proxenus* in diplomatic negotiations, see vol. i. pp. 153, 324.

² Thuc. v. 77-79.

³ Cf. Thuc. v. 61.

⁴ *Ibid.*

⁵ Cf. Thuc. v. 53.

⁶ This clause was, no doubt, specially aimed against the Athenians, cf. v. 52, 61, 75.

several States shall bear such a share in the war as may seem equitable to the Peloponnesians.

(7) "The allies of the Lacedaemonians without Peloponnesus¹ shall be in the same position as the other allies of the Lacedaemonians and the allies of the Argives, and they shall retain their present territory. Allies.

(8) "Both parties may, if they think fit, show this agreement to their allies and make terms with them, but if the allies raise any objection, they shall dismiss them to their homes."

The Argives having assented to these conditions, the Lacedaemonian army was withdrawn, and negotiations were commenced for the establishment of an alliance, offensive and defensive, with the former, who renounced their own former alliance with Athens, Elis, and Mantinea. The second treaty was of wider extent, providing for the independence of the Peloponnesian cities, and for the submission of disputes to an arbitral tribunal. Second treaty between Sparta and Argos.

"It seems good to the Lacedaemonians and to the Argives to make peace and alliance for fifty years on the following conditions:— Alliance for fifty years.

(1) "They shall submit to arbitration on fair and equal terms, according to their ancestral customs. Arbitration.

(2) "The other cities of Peloponnesus shall participate in the peace and alliance, and shall be independent and their own masters, retaining their own territory and submitting to arbitration on fair and equal terms, according to their ancestral customs. Independence.

(3) "All the allies of the Lacedaemonians outside Peloponnesus shall share in the same Allies of the parties.

¹ These included Boeotia, Megara, and others.

terms as the Lacedaemonians, and the allies of the Argives shall be in the same position as the Argives, and shall retain their present territory.

War.

(4) "If it shall be necessary to make an expedition in common against any place, the Lacedaemonians and the Argives shall consult together and fix the share in the war which may be equitably borne by the allies.

Arbitration.

(5) "If any of the States, either within or without Peloponnesus, have a dispute about a frontier, or any other matter, the difference shall be duly settled. But should a quarrel break out between two of the allied cities, they shall appeal to some State which both the cities deem to be impartial.

Ius originis.

(6) "Justice shall be administered to the individual citizens of each State according to their ancestral customs."

Perpetual
alliance
between
Athens and
Thessaly,
361 B.C.

The treaty between Athens and Thessaly, about 361 B.C., endeavoured to establish a perpetual alliance, *εἰς τὸν αἰὲ χρόνον*, against Alexandros of Pherae. The aggressions of this tyrant directed against the autonomous Thessalian towns had before been checked by Thebes (364 B.C.) whose dependent ally he was forced to become. On the death of Epaminondas (362 B.C.), he began to harass the maritime allies of Athens and the Thessalians. The latter therefore sought an alliance with Athens against their common enemy.¹

Perpetual
alliance
between the
Opuntian
Locrians and
Naupactus,
460 B.C.

Another example of a perpetual alliance is that of a century earlier, when by a charter given to Naupactus by the Opuntian Locrians (460 B.C.), each State was empowered to call on the other for a renewal of the oath after a period of thirty years.²

¹ Hicks, 123; Dittenberger, *Sylloge*, no. 85; Michel, 11; Von Scala, 176.

² Hicks, no. 25, p. 32, § A; Michel, 285.

A noteworthy instance of a perpetual alliance, for offensive and defensive purposes, is the convention between Hierapytna and Priansos, two Cretan towns, established at about the end of the third century B.C.¹ It is a confirmation and extension of the provisions of a previous alliance, and stipulates an interchange of various rights and privileges. Thus the rights of citizenship in general, including the reciprocal participation in the cities' religious worship and sacred feasts, the right of intermarriage, of the acquisition of property, of buying and selling, borrowing and lending at interest, and of entering into all other kinds of private contracts, in accordance with the *lex loci contractus*, are all interchanged,—in a word, the parties are to share in common in all things divine and human, καὶ θεῶν καὶ ἀνθρωπίνων πάντων (which is the customary formula inserted in treaties establishing complete alliances in Greece). Further, taxes for exports or imports are abolished, except in the case of certain articles imported by sea. Right of search is mutually accorded. The envoys of each town are to be courteously received by the κόσμοι, the magistrates, of the other, who are, moreover, to furnish them with all necessaries during their stay; otherwise, they are to pay the envoys a sum of ten *stater*s. The magistrates of each town are to have the right of access to the senate, and seats in the public assembly, of the other town. The terms of the alliance are to be publicly recited at a certain festival every year, and ten days' notice of this proceeding is to be given to the other party,—in default of which a fine of a hundred *stater*s is to be paid. A common tribunal, κοινὸν δικάστηριον, composed of an equal number of judges from each town, is established, which is to hear

Perpetual alliance between Hierapytna and Priansos, end of third century B.C.

Exchange of citizenship.

Lex loci contractus.

Free trade.

Right of search. Envoys.

Public recital of terms.

Common tribunal.

¹ *Corp. inscrip. Graec.* 2556; Michel, 16.—Cf. Egger, pp. 79 *seq.*; and Szanto, *Das griechische Bürgerrecht*, pp. 87 *seq.*—This is one of the most interesting epigraphic documents of this category. The marble slab was discovered in Crete, and is now at Oxford. The whole original text of the convention well deserves careful examination; but it is too long to be reproduced here.

all offences against the provisions of the present convention ; and if an action is brought at the instance of an informer and the offence proved, the said informer is to receive a third part of the amount of the fine inflicted on the guilty individual,—the remainder of the sum going to the public treasury. All existing disputes are to be decided within one month after the ratification of the treaty, and in the case of future controversies, advocates are to be employed according to the prescribed orders in the public edict. As to all plunder captured from the enemy, whether or not on a joint expedition, the soldiers concerned are to draw shares by lot, after a certain portion has been reserved for the towns themselves ; should any difference arise with regard to this apportionment, it is to be referred upon, to the arbitration of a third town, *ἐκκλητος πόλις*. The place for the sittings of the common tribunal is to be regulated by the annual magistrates ; and mutual guarantees are to be given for the due settlement of pending causes within two months of the appointment of the judges. Finally, there are provisions regulating the subsequent modification of the treaty, if found necessary, and for the setting up in temples of tablets containing the record of the engagement ; and fines are specified in case of neglect thereof.

Settlement of disputes.

Division of booty.

Arbitration.
Where court is to sit.

Modification of treaty.

Alliance between Hierapytna and Rhodes, end of third century B.C.

A somewhat similar alliance, in peace and war, is that between Hierapytna and Rhodes entered into towards the end of the third century B.C.¹ It begins

¹(From an inscription on a marble slab, which was formerly in Venice. Cauer, *Delectus inscrip. Graec.* no. 181; Michel, no. 21. Cf. Egger, pp. 297-301.)

... Κυρωθείσας δὲ τῆς συμμαχίας καὶ τῶν ὄρκων συντελεσθέντων κατὰ τὰ γεγραμμένα ὑπάρχειν συμμαχίαν ποτὶ τὸν δᾶμον τὸν Ῥοδίων καὶ συνεργεῖν Ἱεραπυτνίους || τῶι δάμωι τῶι Ῥοδίων καὶ πόλιν καὶ λιμένας καὶ ὄρματήρια | παρέχει(ν) καὶ εἴνονος καὶ φίλους καὶ συμμάχους ὑπάρχειν εἰς | τὸν ἅπαντα χρόνον· καὶ εἴ τις κα ἐπὶ πόλιν ἢ χώραν στρατεύ|ηται τὰν Ῥοδίων ἢ τοὺς νόμους ἢ τὰς ποθόδους ἢ τὰν καθεστα|κνίαν δαμοκρατίαν καταλύηι, βοασθῆν Ἱεραπυτνίους Ῥοδίοις || παντὶ σθένει κατὰ τὸ δυνατόν (ll. 7-15, Michel, from the

with a prayer to the gods that the alliance, offensive and defensive, between the two communities, may conduce to their common good; and it provides for the taking of oaths, and for the final ratification of the convention. The Hierapytnians engage to give hospitality to the Rhodians, open their ports, and remain perpetually their friends and devoted allies; they promise to assist them to the utmost of their power in repelling invaders from their territory, or such as may try to subvert their laws, or interfere with their liberty and democratic government; and a number of auxiliary forces is specified for the purpose, provision being also made for their pay and victualling. If war break out between Rhodes and an ally of Hierapytna, the Hierapytnians are to send aid, if Rhodes is attacked; but if Rhodes is the aggressor, then the Hierapytnians may, if they choose, withhold their assistance. If the Rhodians wish to raise mercenaries in Crete, the Hierapytnians are to give them full liberty to do so on their territory, and to help them elsewhere; on the other hand, they are not to help any other State to do so when its intention is to conduct hostilities against Rhodes. Further, the Hierapytnians are to aid the Rhodians to put down piracy in the neighbouring seas; all pirates and vessels captured are to go to Rhodes, but the remainder of the booty is to be shared between the parties. On the other hand, the Rhodians are likewise to be the friends and devoted allies of the Hierapytnians, and to regard them as possessing equal rights with themselves; to aid them against aggressors, and to send two galleys, the equipment and maintenance of which being provided for. If Rhodes is herself

Ratification.

Union in war.

Piracy.

Equality.

text of Cauer). . . Εἰ δέ κα συστᾶ(ι) πόλεμος Ῥο|δίους ποτί τινα τῶν ἐν συμμαχίαι ἐόντων Ἱεραπυτνίους, εἰ μὲν | κα πολεμῶντ(α)ι Ῥόδιοι, ἀποστελλόντων τὰν συμμαχίαν Ῥοδίους | Ἱεραπύτν(ι)οι, εἰ δέ κα πολεμῶντι κατάρξαντες πολέμου, μὴ ἐπά|νεγκες ἔστω Ἱεραπυτνίους ἀποστέλλειν συμμαχίαν Ῥοδίους (ll. 35-40). . . Ἐξέστω δέ καὶ διορθώσασθαι τὰς συνθήκας, εἴ τί κα δοκῆι ἀμφοτέραις ταῖς πόλεσι δια|πρεσβευσαμέναις ποθ' αὐτάς· ἃ δέ κα κοινᾶι δόξει, ταῦτα κύρια ἔστω (ll. 86-88).

at war, then she is to aid Hierapytna as far as she can; but if Hierapytna make war on any State without the advice of Rhodes, then Rhodes is not bound to send forces. No Rhodian is ever, under any circumstances, to take up arms against a Hierapytnian. Finally, permission is given to modify this convention by their respective embassies, if the suggested alterations or additions are mutually agreed upon; and provision is made for inscribing the text on steles and depositing them in their temples, and for taking and administering the oaths by deputies and commissioners.

Modification
of treaty.

Alliance
between
Athens,
etc., and
Ptolemaeus
Philadelphus,
c. 267 B.C.

About 267 B.C. an alliance was established between Athens, Areus, king of Sparta, several other Greek States, and Ptolemaeus Philadelphus, to oppose the ambitious projects of Antigonus Gonatas, king of Macedonia. The inscription of the decree relating to this alliance is contained on a marble slab found on the Acropolis.¹ The purport of this is to the following effect:—Whereas the Athenians and the Lacedaemonians, including their respective allies, having engaged, in pursuance of a previous compact of friendship and alliance, against those who endeavoured to

¹ Rangabé, *Antiq. hellén.* t. ii. no. 453; Michel, 130; *Corp. inscrip. Att.* ii. 332; Dittenberger, 163.—The portion of the text here given is taken from that of Rangabé:

..... Ἐπειδὴ
 ἐκότερομ μὲν Ἀθηναῖοι καὶ Λακεδαιμόνιοι καὶ οἱ σύμμαχοι οἱ ἐκατέρων φιλίαν καὶ συμμαχίαν κοινὴν ποιησάμενοι πρὸς ἑαυτοὺς, πολλοὺς καὶ καλοὺς ἀγῶνας ἠγωνίσαντο με-
 10 τ' ἀλλήλων πρὸς τοὺς καταδουλοῦσθαι τὰς πόλεις ἐπιχειρήσαντας, ἐξ ὧν ἑαυτοῖς τε δόξαν ἐκτήσαντο καὶ τοῖς ἄλλ(ο)ις Ἑλλησι παρεσκεύασαν τὴν ἐλευθερίαν, καὶ νῦν δὲ κ(α)ιρῶν καθειληφότων ὁμοίων τὴν Ἑλλάδα πᾶσαν διὰ το(ύς) καταλύειν ἐπιχειροῦντας τοὺς τε νόμους καὶ τὰς π(α)τρίους ἐκάστ-
 15 οὺς πολιτείας. . . .
 30 . . . ὅπως ἂν οὖν, κοινῆς ὁμοιοῖας γενομένης τοῖς Ἑλλησι πρὸς τε τοὺς νῦν ἡδικηκότας καὶ παρεσπονδη(κό)τας τὰς πόλεις, πρόθυμοι μετὰ τοῦ βασιλέως Πτολεμαίου καὶ μετ' ἀλλήλων ὑπάρχωσιν ἀγωνισταὶ, καὶ τὸ λοιπὸν μεθ' ὁμο(νο)-
 ίας σφῆξωσιν τὰς πόλεις. . . .

subjugate their cities,¹—their combined action bringing glory to themselves and ensuring liberty to the other Greek States ; now, similar circumstances having arisen in Greece, owing to the attempt made on the freedom and the political constitutions of the various independent communities, the Athenians have concluded an alliance with king Ptolemy, who has shown a friendly disposition towards Greece, and have resolved to procure also an alliance between him and the other Greek States ; likewise, the Lacedaemonians, being the friends and allies of Ptolemy, have decreed to ally themselves with Athens, together with the Eleans, Achaeans, Mantineans, and the other allies of Areus, in order that harmony be established amongst all the Hellenic communities, and combined action be taken by them, along with Ptolemy, against those who might conceive designs on Greece.

The treaty between Smyrna and Magnesia (on the Sipylum, in Lydia), 244 B.C., establishes a complete alliance between the two States. Smyrna bestows the right of citizenship to the Magnesians, that is, to such as are freemen and of Greek nationality, on the condition that the latter will preserve the alliance, and continue their friendship towards king Seleucus. The contracting parties are to have the same friends and enemies, and to enjoy a certain community of laws. Provision is made for the administration of the oath, the form of which is specified. After the compact has been ratified by their oaths, all grievances that arose between them during the war shall become extinguished. Among other stipulations, it is laid down that the currency of Smyrna is to be accepted in Magnesia.

Treaty between
Smyrna and
Magnesia,
244 B.C.
Citizenship.

Laws in
common.

The text of the document² (preserved on a large marble slab brought from Smyrna, and now in Oxford) is of an elaborate character. It consists of three parts ; and the whole is drawn up with extreme care and

¹ This probably refers to the defeated projects of Demetrius, 288 B.C., and of Pyrrhus, 272 B.C.

² *Corp. inscrip. Graec.* 3137 ; Michel, 19.—Cf. Egger, pp. 108 *seq.* ; Szanto, *op. cit.* p. 108.

precision, indicating a tolerably advanced stage in the development of ancient diplomatic methods. "On se croirait en pleine diplomatie du moyen âge," says Egger, "au temps où les républiques de l'Italie septentrionale s'agitaient dans des discordes sans fin, protégées et opprimées tour à tour par les royautes du midi ou par l'Empereur."¹

Treaty between
Byzantium,
Bithynia,
and Rhodes,
200 B.C.

Different kinds of treaties are those (as reported by Polybius) between Byzantium, Prusias, the king of Bithynia, and Rhodes, 220 B.C.² The treaty with the Rhodians provided that Byzantium should not impose any toll on ships sailing into the Pontus. In the treaty with Prusias the following conditions were laid down :

Perpetual
peace.

(1) 'There shall be peace and amity for ever between Prusias and the Byzantines.

(2) 'The Byzantines shall in no way attack Prusias, nor Prusias the Byzantines.

Prisoners of
war.

(3) 'Prusias shall restore to the Byzantines all lands, forts, populations, and prisoners of war without ransom; and besides these things, the ships taken at the beginning of the war, and the arms seized in the fortresses; and also the timbers, stonework, and roofing belonging to the fort called Hieron.

Restoration of
property.

(4) 'Finally, Prusias shall compel such of the Bithynians as have any property, taken from the Byzantine district of Mysia, to restore it to the farmers.'

Alliance
between
Pharnaces,
Eumenes, and
Ariarthes,
179 B.C.

An interesting example of a combination effected with a view to opposing the Roman supremacy is the alliance between Pharnaces, Eumenes, and Ariarthes, 179 B.C. According to Polybius,³ the terms were as follows:—

Perpetual
peace.

(1) 'Eumenes, Prusias, and Ariarthes shall maintain perpetual peace with Pharnaces and Mithridates.

¹ *Op. cit.* p. 119.

² Polyb. iv. 52.

³ Polyb. xxvi. 6 (Shuckburgh, xxv. 2); cf. Liv. xl. 20.

(2) 'Pharnaces shall not enter Galatia on any pretence.

(3) 'Such treaties as exist between Pharnaces and Gauls are hereby rescinded.

(4) 'Pharnaces shall likewise evacuate Paphlagonia, after restoring the inhabitants whom he had previously expelled, with their shields, javelins, and other equipment. Evacuation.

(5) 'Pharnaces shall restore to Ariarthes all territory of which he has deprived him, with the property thereon and the hostages. Restoration of territory.

(6) 'He shall restore Tium by the Pontus which some time before was given freely and liberally by Eumenes to Prusias.¹

(7) 'Pharnaces shall restore, without ransom, all prisoners of war and all deserters. Prisoners of war.

(8) 'He shall repay to Morizus and Ariarthes, in lieu of all money and treasure taken from them, the sum of nine hundred talents, and shall add thereto three hundred talents for Eumenes towards the expenses of the war. Indemnity.

(9) 'Mithridates, the satrap of Armenia, shall also pay three hundred talents, because he attacked Ariarthes in defiance of the treaty with Eumenes.'

The treaty further mentioned the other signatories, and specified the number and quality of the hostages to be given by Pharnaces. Hostages.

In the treaty between Lato and Olus,² two towns in Crete, entered into in the latter half of the second century B.C., a perpetual alliance was stipulated,³ and provision was made regarding the territoriality of their Treaty between Lato and Olus, latter half of second century B.C.

¹ Cf. Polyb. v. 77.

² *Corp. inscrip. Graec.* 2554.—Cf. Egger, p. 125.

³ The alliance is entered into "for all time," and, as usual, speaks of their having "the same friends and enemies"; cf. *ibid.* ll. 10-12: . . . [φίλων] καὶ συμμάχων ἀλλάλοις ὑπομένειν ἀπλῶς καὶ ἀδόλως εἰς τὸν πάντα χρόνον, καὶ [τὸν] ἀ[ὐτὸν φίλον] καὶ [ἐχ]θρὸν εἴ[ξε]ν.

respective laws. Thus, it stipulates that mutual assistance should be rendered in case of aggression directed against them, that all their civil and religious rights should be interchanged, that the treaty should be ratified annually by the solemn oath, the form of which is prescribed, that their magistrates should proceed to the cities to determine questions of law, and, whilst engaged in these duties, that they should be held inviolable, and be accorded hospitality. Further, it provides for the addition or removal of any clause by mutual consent, and for the preservation of the text of the treaty. Finally, their boundaries are clearly marked out.

Legal settlement of disputes.

Amendment of treaty.

Boundaries.

Treaty between Athens and Phaselis, 395-385 B.C. (?)

Disputes arising out of contracts.

In regard to the above-mentioned question of the territoriality of the law, the agreement between Athens and Phaselis, made about 395-385 B.C., is of the greatest importance. It provides (as has already been pointed out in an earlier chapter¹) that disputes arising out of commercial contracts entered into at Athens between Athenian and Phaselite merchants should be heard by the Athenian polemarch; but that actions on contracts not concluded at Athens should be tried in accordance with the conditions of a treaty previously established by the two parties; and, if any Athenian magistrate should pronounce sentence on cases brought before him contrary to these regulations, his judgment was to be regarded as void.²

Treaty between Oeantheia and Chalaëum, c. 431 B.C.

Regulation of reprisals.

Maritime capture.

The treaty between Oeantheia and Chalaëum, two Locrian towns on the gulf of Crissa in Phocis, concluded about 431 B.C., is one of the most noteworthy conventions relating to the regulation of the practice of reprisals, *σὺλαι*. It secured the total discontinuance of seizures on land and in the ports, and restricted the practice to the open sea. It provided for the payment of a certain fine in the case of unlawful capture, and ordered restitution of the goods within a period of ten

¹ See vol. i. pp. 198 *seq.*

² Hicks, 36; *Corp. inscrip. Att.* ii. 11; Michel, 6.—See the Greek text of this convention, vol. i. p. 199, note 2.

days. All claims that might arise were to be brought before different tribunals according to circumstances.¹ Legal solution of disputes.

A somewhat similar engagement is the alliance between Ceos and the Aetolians, of the beginning of the second century B.C. It stipulates that no Aetolian shall carry off to slavery any citizen of Ceos, by land or by sea, for any grievance whatever; and in return the rights of Cean citizenship are bestowed on the Aetolians.² Alliance between Ceos and the Aetolians, beginning of second century B.C.

Mention has already been made of the conventions (σύμβολα) entered into for regulating commercial relationships, of the mode of settling the suits arising therefrom (δίκαι ἀπὸ συμβόλων), of the determination of the competence of the tribunals, according to the prescriptions of the *forum contractus*, and of the provision for reference to the courts of a third city (ἐκκλητος πόλις), if mutually agreed upon.³ Commercial treaties. Jurisdiction.

Though there were numerous treaties to regulate trading transactions and to adjust controversies connected therewith, it cannot be said that amongst the ancient peoples there were treaties of commerce in the strict acceptance of the term, that is, in the modern sense.⁴

We have the record of a treaty between Amyntas III., king of Macedonia, and Chalcis in Euboea, 389-383 B.C., for the purpose of regulating the exportation of timber for the use of buildings and ships. It was laid down, as the main condition, that there should be a previous declaration and payment of duty.⁵ Commercial treaty between Macedonia and Chalcis, 389-383 B.C.

Some twenty or thirty years later, a treaty of a like nature was concluded between Athens and Ceos (about Commercial treaty between Athens and Ceos, 360-350 B.C.

¹ Von Scala, no. 58, estimates the date of this convention at about 450 B.C.—Cf. as to jurisdiction, vol. i. pp. 198 *seq.*, and see further *infra*, chap. xxvii. in connection with the various forcible measures short of war.

² See *infra*, chap. xxvii., for references and text of the inscription.

³ See vol. i. pp. 198 *seq.*

⁴ Cf. Büchsenenschütz, *Besitz und Erwerb im gr. Alterth.* pp. 516 *seq.*

⁵ Hicks, 95; Michel 5.—Cf. Egger, p. 103.

360-350 B.C.). Ceos had joined the Athenian league in 376-375 B.C.; and at about 363, an anti-Athenian revolution took place in the island. This rebellion, however, was soon put down.¹ Shortly afterwards a commercial treaty was entered into between Athens and Ceos. The terms were not spontaneously agreed upon on both sides, but were rather dictated by Athens; and they were of a stringent character, probably by way of retaliation for the former rising. An inscription² found on the Acropolis embodies the decrees of three Cean cities, confirming the prohibition laid down in the existing treaty as to the export of red ochre, in which Athens thus acquired the monopoly. *Μίλτος* (ruddle) was extensively used in Athens, partly as a drug, and partly as a pigment in the various arts.³

Commercial
treaty between
Athens and
Bosporus,
357 B.C.

In the commercial treaty between Athens and Leucon I., king of Bosporus, 357 B.C.,⁴ the Athenians obtained from him the right of shipping corn without export duty, before any other people were supplied; and in return for this concession, the king and his sons were admitted to Athenian citizenship, and also exempted from the various burdens incidental thereto.⁵

Treaty between
Erythrae
and Atarneus,
c. 350-345 B.C.

In the military alliance, during the social war (about 350-345 B.C.), between the Erythraeans of Asia and Hermias, the tyrant of Atarneus, there were certain conditions relating to trading operations, specially inserted in consequence of the prospect of war; for example, with regard to the unloading and safe storage of cargoes on allied territory,—in which case no duty

¹See the inscription in Hicks, no. 118, as to this revolution, and as to the subsequent steps taken by Athens for cementing the alliance on a firmer basis.

²Hicks, 137; Michel, 401.

³Cf. Büchschütz, *op. cit.* pp. 516, 550 *seq.*

⁴Von Scala, no. 184.

⁵Demosth. *c. Lept.* 36 (p. 468): ὡς μὲν εἰκότως καὶ δικαίως τετύχηκε τῆς ἀτελείας παρ' ἡμῶν ὁ Λεύκων. . . § 33: οὐ μόνον ἡμῖν ἱκανὸν σίτον ἀπέστειλεν. . . Cf. Strabo, vii. 4. 6; Büchschütz, *op. cit.* p. 517.

was to be imposed unless the said cargoes were sold, when a tax of two per cent. was to be paid.¹

The few examples given above will perhaps suffice to give an idea of the nature of alliances and conventions concluded by or between Hellenic communities. In ancient times wars, no doubt, were frequent,—though their frequency has been so exaggerated by modern writers as to exclude all other pacific relationships. However, diplomatic activity and treaty negotiations were unceasing. Thus, Von Scala² cites some two hundred and twenty cases of international engagements entered into before the year 338 B.C. Some of these (other than the examples given above) are: the treaty between Sparta and Tegea, c. 550 B.C.;³ between Carthage and Etruria, 540 B.C.;⁴ between Carthage and Massilia, c. 540 B.C.;⁵ alliance between Athens and Plataea, 519 B.C.;⁶ treaty between Sparta and Thebes, 458 B.C.;⁷ alliance between Athens and the Phocians, 454-3 B.C.;⁸ treaty between Athens and Rhegium, 433 B.C.;⁹ between Athens and Leontinoi, 433 B.C.;¹⁰ alliance between Athens and Corcyra, 433 B.C.;¹¹ treaty between Athens and Darius II., 423-421 B.C.;¹² between Athens and Perdicas of Macedonia, 422 B.C.;¹³ between Sparta and Persia, 412-411 B.C.;¹⁴ the Corinthian alliance against Sparta, 395 B.C.;¹⁵ alliance of several Greek towns (Rhodes, Cnidus, Samos, Ephesus, Iassus) against Sparta, 394 B.C.;¹⁶ and many others.

Large number
of treaties.

¹ Hicks, no. 138 (the stone, upon which the inscription is engraved, was found at Erythrae in Ionia, and is now in the British Museum).

² *Die Staatsverträge des Altertums.*

³ *Ibid.* no. 34.

⁴ *Ibid.* no. 36.

⁵ *Ibid.* no. 37.

⁶ *Ibid.* no. 40.

⁷ *Ibid.* no. 55.

⁸ *Ibid.* no. 56.

⁹ Hicks, 51.

¹⁰ Hicks, 52.

¹¹ Von Scala, 66; cf. Thuc. i. 44; iii. 75.

¹² Von Scala, 80.

¹³ *Ibid.* 81; cf. Thuc. iv. 128, 132.

¹⁴ Von Scala, 92; cf. Thuc. viii. 18, 37, 58.

¹⁵ *Ibid.* no. 102.

¹⁶ *Ibid.* no. 105.

B. In Rome.

Some examples of Roman confederations and alliances have already been considered.¹ A few other treaties, to which Rome was a party, may now be mentioned; but in the case of Rome, the large numbers and the great variety characterizing Greek conventions are naturally wanting,—a consequence due to diverse circumstances, but, in particular, to the fundamental difference of national policy.

Treaties
between Rome
and Carthage.

The treaties entered into between Rome and Carthage (as reported by Polybius) are of a remarkable character, and evince a clear development of national policy and Roman international diplomacy.

First treaty,
509-508 B.C.

The first treaty appears to have been concluded about 509-508 B.C.,² soon after the expulsion of the kings, in the consulship of L. Junius Brutus and M. Horatius. Polybius gives a Greek translation of the original text which, being in the ancient language, was, as he says, difficult even to the best Roman scholars. It placed a restriction on the Roman sphere of navigation, secured the due performance of commercial contracts, established some form of international jurisdiction, and gave Rome access to the Carthaginian provinces of Sicily, and the enjoyment of full rights therein. The following appear to have been the specific provisions :³

¹ See *supra*, pp. 33 *seq.*

² Mommsen has assailed the Polybian chronology of the first treaty, and maintains that it is to be attributed to the year 348 B.C. See his *History of Rome*, English translation, vol. ii. appendix, taken from the historian's work, *Die römische Chronologie bis auf Caesar*. The argument of Mommsen, however, scarcely carries full conviction; and there appears no sufficiently cogent ground for referring the convention to a date over a century and a half later than that assigned by Polybius. Cf. H. Nissen, who defends the Polybian date (*Die römisch-karthagischen Bündnisse*, in *Neue Jahrbücher für Philologie und Paedagogik*, Leipzig, 1867, Band 95, pp. 321-332).

³ Polyb. iii. 22 : “ἐπὶ τοῖσδε φιλίαν εἶναι Ῥωμαίοις καὶ τοῖς Ῥωμαίων συμμάχοις καὶ Καρχηδονίοις καὶ τοῖς Καρχηδονίων συμμάχοις. μὴ πλεῖν Ῥωμαίους μηδὲ τοὺς Ῥωμαίων συμμάχους ἐπέκεινα

“There shall be friendship between the Romans and their allies, and the Carthaginians and their allies, on these conditions:—

(1) “Neither the Romans nor their allies are to sail beyond¹ the Fair Promontory, unless driven by stress of weather or the fear of enemies. If any one of them be driven ashore he shall not buy or take aught for himself save what is needful for the repair of his ship and the service of the gods, and he shall depart within five days.

Limitation of maritime exploits.

(2) “Men landing for traffic shall strike no bargain save in the presence of a herald or town-clerk.² Whatever is sold in the presence of these, let the price be secured to the

Commercial contracts.

τοῦ Καλοῦ ἀκρωτηρίου, ἐὰν μὴ ὑπὸ χεიმῶνος ἢ πολεμίων ἀναγκασθῶσιν· ἐὰν δέ τις βία κατενεχθῆ, μὴ ἐξέεστο αὐτῷ μηδὲν ἀγοράζειν μηδὲ λαμβάνειν, πλὴν ὅσα πρὸς πλοίου ἐπισκευὴν ἢ πρὸς ἱερά. ἐν πέντε δ' ἡμέραις ἀποτρεχέτω. τοῖς δὲ κατ' ἐμπορίαν παραγινομένοις μηδὲν ἔστω τέλος πλὴν ἐπὶ κήρυκι ἢ γραμματεῖ· ὅσα δ' ἂν τούτων παρόντων πραθῆ, δημοσία πίστει ὀφειλέσθω τῷ ἀποδομένῳ, ὅσα ἂν ἢ ἐν Λιβύῃ ἢ ἐν Σαρδόνι πραθῆ. ἐὰν Ῥωμαίων τις εἰς Σικελίαν παραγίνηται ἢς Καρχηδόνοι ἐπάρχουσιν, ἴσα ἔστω τὰ Ῥωμαίων πάντα. Καρχηδόνοι δὲ μὴ ἀδικείτωσαν δῆμον Ἀρδεατῶν Ἀντιατῶν Λαρεντίνων Κιρκαυτῶν Ταρρακινιτῶν, μηδ' ἄλλον μηδένα Λατίνων, ὅσοι ἂν ὑπήκοοι. ἐὰν δέ τινες μὴ θεσιν ὑπήκοοι, τῶν πόλεων ἀπεχέσθωσαν· ἂν δὲ λάβωσι, Ῥωμαίοις ἀποδιδότωσαν ἀκέραιον, φρούριον μὴ ἐνοικοδομείτωσαν ἐν τῇ Λατίνῃ. ἐὰν ὡς πολέμοι εἰς τὴν χώραν εἰσέλθωσιν, ἐν τῇ χώρᾳ μὴ ἐννυκτερευέτωσαν.”

The following may be consulted with regard to this treaty: Heyne, *Opuscula academica* . . . , t. iii. pp. 39-78; G. Wolff, *De primo inter Romanos et Carthaginienses foedere* (Neubrandenburg, 1843); E. Müller, *Ueber das älteste römisch-karthagische Bündniss* (in *Verhandlungen der Versammlung der deutschen Philologen*, Frankfurt-am-Main, 1861; pp. 79-92); H. Nissen, *loc. cit.*; A. Pirro, *Il primo trattato fra Roma e Cartagine* (Pisa, 1892).

¹ *I.e.* to the W. or S. of the promontory, which, in this case, was probably the Mercurii Pr., C. Bon, the eastern headland of the Gulf of Carthage. Polybius suggests that the aim of this prohibition was to prevent foreigners from taking part in the trade of the colonies on the coast of Byzacium and the Emporia on the Lesser Syrtis.

² Probably by public auction.

seller on the credit of the State—that is to say, if such a sale be in Libya or Sardinia.

Civic rights.

(3) “If any Roman comes to the Carthaginian province in Sicily he shall enjoy all rights enjoyed by others. The Carthaginians shall do no injury to the people of Ardea, Antium, Laurentium, Circeii, Tarracina, nor any other people of the Latins that are subject to Rome.

Limitation of military action.

(4) “From those townships even which are not subject to Rome¹ they shall hold their lands; and if they take one shall deliver it unharmed to the Romans. They shall build no fort in Latium; and if they enter the district in arms, they shall not stay a night therein.”

“This treaty,” says the writer in the *Dictionary of Greek and Roman Geography*,² “clearly indicates the respective dominions, and the relative positions of the two States at the end of the sixth century B.C.; for it is ridiculous to suppose that it was designed to anticipate relations which might occur at some future time, and not to settle questions which had actually arisen.”

Second treaty,
c. 306 B.C.

The second treaty between Rome and Carthage, concluded about 306 B.C., prohibited the practice of reprisals, and regulated other important relationships between the two States. The provisions, given by Polybius, are as follows :³

¹ *i.e.* those in Latium.

² *s.v.* *Carthago*, vol. i. p. 539.

³ Polyb. iii. 24 : “ἐπὶ τοῖσδε φιλίαν εἶναι Ῥωμαίοις καὶ τοῖς Ῥωμαίων συμμάχοις καὶ Καρχηδονίων καὶ Τυρίων καὶ Ἴτυκαίων δῆμῳ καὶ τοῖς τούτων συμμάχοις. τοῦ Καλοῦ ἀκρωτηρίου, Μαστίας, Ταρσηίου μὴ ληίζεσθαι ἐπέκεινα Ῥωμαίους μῆδ' ἐμπορεύεσθαι μῆδὲ πόλιν κτίζειν. εἰάν δὲ Καρχηδόνιοι λάβωσιν ἐν τῇ Λατίνῃ πόλιν τινὰ μὴ οὔσαν ὑπήκοον Ῥωμαίοις, τὰ χρήματα καὶ τοὺς ἄνδρας ἐχέτωσαν, τὴν δὲ πόλιν ἀποδιδότωσαν. εἰάν δὲ τινες Καρχηδονίων λάβωσιν τινὰς πρὸς οὓς εἰρήνη μὲν ἐστὶν ἐγγραπτος Ῥωμαίοις, μὴ ὑποτάττονται δὲ τι αὐτοῖς, μὴ καταγέτωσαν εἰς τοὺς Ῥωμαίων λιμένας· εἰάν δὲ καταχθέντος ἐπιλάβηται ὁ Ῥωμαῖος, ἀφίεσθαι. ὡσαύτως δὲ

“There shall be friendship between the Romans and their allies, and the Carthaginians, Tyrians, and township of Utica, on these terms :—

(1) “The Romans shall not maraud, nor traffic, nor found a city east of the Fair Promontory, Mastia, Tarseium. If the Carthaginians take any city in Latium which is not subject to Rome, they may keep the prisoners and the goods, but shall deliver up the town. If the Carthaginians take any folk, between whom and Rome a peace has been made in writing, though they be not subject to them, they shall not bring them into any harbours of the Romans ; if such a one be so brought ashore, and any Roman lay claim to him, he shall be released. In like manner shall the Romans be bound towards the Carthaginians.

Limitation of maritime and military exploits.

(2) “If a Roman take water or provisions from any district within the jurisdiction of Carthage, he shall not injure, while so doing, any between whom and Carthage there is peace and friendship. Neither shall a Carthaginian in like case. If any one shall do so, he shall not be punished by private vengeance, but such action shall be a public misdemeanour.

Punishment regularized.

(3) “In Sardinia and Libya no Roman

Territorial extension.

μηδ' οἱ Ῥωμαῖοι ποιείτωσαν. ἂν ἔκ τινος χώρας ἧς Καρχηδόνιοι ἐπάρχουσιν, ὕδωρ ἢ ἐφόδια λάβῃ ὁ Ῥωμαῖος, μετὰ τούτων τῶν ἐφοδίων μὴ ἀδικεῖτο μηδένα πρὸς οὓς εἰρήνη καὶ φιλία ἐστὶ Καρχηδονίους. ὡσαύτως δὲ μηδ' ὁ Καρχηδόνιος ποιεῖτω. εἰ δέ, μὴ ἰδίᾳ μεταπορευέσθω· εἴαν δέ τις τοῦτο ποιήσῃ, δημόσιον γινέσθω τὸ ἀδίκημα. ἐν Σαρδόνι καὶ Λιβύῃ μηδεὶς Ῥωμαίων μήτ' ἐμπορευέσθω μήτε πόλιν κτιζέτω, εἰ μὴ ἕως τοῦ ἐφόδια λαβεῖν ἢ πλοῖον ἐπισκενάσαι. εἴαν δὲ χειμῶν κατενέγκῃ, ἐν πένθ' ἡμέραις ἀποτρεχέτω. ἐν Σικελίᾳ ἧς Καρχηδόνιοι ἐπάρχουσι καὶ ἐν Καρχηδόνι πάντα καὶ ποιεῖτω καὶ πωλείτω ὅσα καὶ τῷ πολίτῃ ἔξεστιν. ὡσαύτως δὲ καὶ ὁ Καρχηδόνιος ποιεῖτω ἐν Ῥωμῇ.”

shall traffic or found a city; he shall do no more than take in provisions and refit his ship. If a storm drive him upon those coasts, he shall depart within five days.

Mutual concessions.

(4) "In the Carthaginian province of Sicily and in Carthage he may transact business and sell whatsoever it is lawful for a citizen to do. In like manner also may a Carthaginian at Rome."

Third treaty, 279 B.C.

The third treaty concluded between Rome and Carthage, 279 B.C., at the time of the invasion of Pyrrhus into Sicily, contained substantially the same provisions as those of the two preceding conventions, together with the following additional clauses:¹

Mutual aid guaranteed in spite of alliances with others.

(1) "If they make a treaty of alliance with Pyrrhus, the Romans or Carthaginians shall make it on such terms as not to preclude the one giving aid to the other, if that one's territory is attacked.

(2) "If one or the other stand in need of help, the Carthaginians shall supply the ships, whether for transport or war; but each people shall supply the pay for its own men employed on them.

(3) "The Carthaginians shall also give aid by sea to the Romans if need be; but no one shall compel the crews to disembark against their will."

It appears that there were a fourth and a fifth treaty entered into between the same parties; but they need not concern us here.²

¹ Polyb. iii, 25 : "ἐὰν συμμαχίαν ποιῶνται πρὸς Πύρρον ἔγγραπτον, ποιείσθωσαν ἀμφοτέρω, ἵνα ἐξῆ βoηθεῖν ἀλλήλοις ἐν τῇ τῶν πολεμουμένων χώρα. ὁπότεροι δ' ἂν χρεῖαν ἔχωσι τῆς βοηθείας, τὰ πλοῖα παρεχέτωσαν Καρχηδόνιοι καὶ εἰς τὴν ὁδὸν καὶ εἰς τὴν ἔφοδον, τὰ δὲ ὀψώνια τοῖς αὐτῶν ἐκάτεροι. Καρχηδόνιοι δὲ καὶ κατὰ θάλατταν Ῥωμαίοις βοηθείωσαν, ἂν χρεῖα ᾖ. τὰ δὲ πληρώματα μηδεὶς ἀναγκαζέτω ἐκβαίνειν ἀκουσίως."

² Cf. Nissen, *loc. cit.*

When the war between Rome and Macedon was renewed in 200 B.C., the Aetolians at first decided to remain neutral; but owing to the success of the consul Galba they soon joined the Romans, declared war against Philip, and took part in the battle of Cynoscephalae, 197 B.C.¹ Afterwards the two parties entered into a formal treaty, with a view to break the power of Macedon; and it was stipulated that whatever booty might be taken should go to the Romans, and the lands and conquered towns to the Aetolians.²

Treaty between Rome and the Aetolians, 197 B.C.

The Aetolians were discontented with the settlement by Flamininus of the affairs in Greece, after the victory in 197 B.C.; and on the return of Flamininus to Italy, they invited Antiochus to invade Greece, and soon after declared war against Rome, 192 B.C. The Roman consul M. Fulvius Nobilior proceeded to Greece, and laid siege to Ambracia, 189 B.C. In the meantime Antiochus was defeated at Thermopylae, 191 B.C., and at Magnesia, 189 B.C. Hence the Aetolians were compelled to sue for peace on any terms. The Romans granted it, but not without destroying the independence of their adversaries and making them their vassals. The following were the provisions:³

Treaty between Rome and Aetolia, 189 B.C.

(1) "The people of the Aetolians shall in good faith maintain the empire and majesty of the people of Rome.

Aetolia in subjection.

(2) "They shall not allow hostile forces to pass through their territory or cities against the Romans, their allies or friends; nor grant them any supplies from the public fund.

Passage of hostile forces.

(3) "They shall have the same enemies as the people of Rome; and if the Roman people go to war with any, the Aetolian people shall do so also.

Union against common enemy.

¹ Liv. xxxiii. 7.

² Liv. xxxiii. 13: "... ut belli praeda rerum, quae ferri agique possent, Romanos, ager urbesque captae Aetolos sequerentur."

³ Polyb. xxi. 32 (xxii. 13 (15)); cf. Liv. xxxviii. 11.

Fugitive slaves
and prisoners.

(4) "The Aetolians shall surrender to the praefectus in Corcyra, within a hundred days from the completion of the treaty, runaway slaves, and prisoners of the Romans and their allies, except such as having been taken during the war have returned to their own land and been subsequently captured; and except such as were in arms against Rome during the time that the Aetolians were fighting on the side of the Romans. If there should be any not found within that time, they shall hand them over as soon as they are forthcoming, without deceit or fraud. And such persons, after the completion of the treaty, shall not be allowed to return to Aetolia.

Payment of
indemnity.

(5) "The Aetolians shall pay the consul in Greece at once two hundred Euboic talents of silver, of a standard not inferior to the Attic. In place of one-third of this silver, they may, if they so choose, pay gold, at the rate of a mina of gold to ten minae of silver. They shall pay the money in the six years next following the completion of the treaty in yearly instalments of fifty talents; and shall deliver the money in Rome.

Hostages.

(6) "The Aetolians shall give the consul forty hostages, not less than ten or more than forty years old, to remain for the six years; they shall be selected by the Romans freely, excepting only the strategus, hipparch, public secretary, and such as have already been hostages at Rome. The Aetolians shall deliver such hostages in Rome; and if any one of them die, they shall give another in his place.

(7) "Cephalenia shall not be included in this treaty.

(8) "Of such territories, cities, and men as once belonged to the Aetolians, and, in the consulship of Titus Quinctius and Cnaeus Domitius, or subsequently, were either captured by the Romans or voluntarily embraced their friendship, the Aetolians shall not annex any, whether city or men therein.

Annexation limited.

(9) "The city and territory of Oeniadae shall belong to the Acarnanians."

The treaty between Rome and Chios (which has already been referred to) deals with the important question of territorial jurisdiction.¹

Treaty between Rome and Chios.

In connection with the Roman practice of treaty-making, it will be convenient to mention here the treaty of alliance, offensive and defensive, concluded between Hannibal and Philip of Macedon, 215 B.C. One of its main objects is to establish an effective opposition to the growing power and encroachments of Rome. The following are the provisions, as given by Polybius:²

Treaty between Carthage and Macedon, 215 B.C.

(1) "Let the Carthaginians, as supreme, Hannibal their chief general and those serving with him, all members of the Carthaginian dominion living under the same laws, as well as the people of Utica, and the cities and tribes subject to Carthage, and their soldiers and allies, and all cities and tribes in Italy, Celt-land, and Liguria, with whom we have a compact of friendship, and with whomsoever in this country we may hereafter form such compact, be supported by king Philip and the Macedonians, and all other Greeks in alliance with them.

Macedon and her allies to aid Carthage and her allies.

(2) "On their parts also king Philip and the Macedonians, and such other Greeks as are his allies, shall be supported and protected by the Carthaginians now in this

Carthage and her allies to aid Macedon and her allies.

¹ *Corp. inscrip. Graec.* 2222; vol. i. p. 208.
11.

² Polyb. vii. 9.
F

army, and by the people of Utica, and by all cities and tribes subject to Carthage, both soldiers and allies, and by all allied cities and tribes in Italy, Celt-land, and Liguria, and by all others in Italy as shall hereafter become allies of the Carthaginians.

Previous allies safeguarded.

(3) "We will not make plots against, nor lie in ambush for, each other; but in all sincerity and good-will, without reserve or secret design, will be enemies to the enemies of the Carthaginians, saving and excepting those kings, cities and ports with which we have sworn agreements and friendships.

(4) "And we, too, will be enemies to the enemies of king Philip, saving and excepting those kings, cities and tribes with which we have sworn agreements and friendships.

Macedon to aid Carthage against Rome.

(5) "Ye shall be friends to us in the war in which we now are engaged against the Romans, till such time as the gods give us and you the victory; and ye shall assist us in all ways that be needful, and in whatsoever way we may mutually determine.

Macedon to share benefits of victory.

(6) "And when the gods have given us victory in our war with the Romans and their allies, if Hannibal shall deem it right to make terms with the Romans, these terms shall include the same friendship with you, made on these conditions: (1) the Romans not to be allowed to make war on you; (2) not to have power over Corcyra, Apollonia, Epidamnum, Pharos, Dimale, Parthini, or Atitania; (3) to restore to Demetrius of Pharos all those of his friends now in the dominion of Rome.

Mutual assistance.

(7) "If the Romans ever make war on you or on us we will aid each other in such war, according to the need of either.

(8) "So also if any other nation whatever

does so, always excepting kings, cities, and tribes, with whom we have sworn agreements and friendships.

(9) "If we decide to take away from, or add to this sworn treaty, we will so take away, or add thereto, only as we both may agree."

Modification
of treaty.

C. Roman Conventions and the *Iudicium Recuperatorium*.¹

It has already been seen that in numerous cases of alliances between Rome and other States, and also in the special treaties regulating their commercial relationships, provision was frequently made for the peaceful adjustment of disputes that might arise between the nationals of the signatory States, and for the punishment of offences that might be committed by the subjects of one contracting party against those of the other. The existence of such a juridical position of States with regard to Rome was termed *recuperatio*, and the relative jurisdiction thus established was designated *iudicium recuperatorium*, whilst the court or commissioners appointed to investigate and adjudicate on a cause were the *recuperatores*. A modern German writer not unaptly speaks of the courts of recuperators as having constituted, in a certain sense, the practical realization of the respect for foreign law, developed by the law of nations; and he points out that the institution answered to a kind of international trade law applied by common courts.²

The Roman
court of
recuperators.

¹The following may be consulted: E. Huschke, *De recuperatoribus* (in *Analecta litteraria*, Lipsiae, 1826; Excursus II. pp. 208-253); J. A. Collmann, *De Romanorum iudicio recuperatorio* (Berlin, 1835); C. Sell, *Die Recuperatio der Römer* (Braunschweig, 1837); Haakh, in Pauly's *Real-Encyclop.* s.v. *Recuperatio*, vol. vi. pp. 413-421; V. Saverot, *Les récupérateurs* (Dijon, 1885).

²F. Meili, *Das internationale Civil- und Handelsrecht* (Zürich, 1902), § 16, p. 71: "Das iudicium recuperatorium ist in gewissem Sinne die praktische Verwirklichung der entwickelten Berücksichtigung des jus gentium. Ja man darf in diesem Institute eine Art Vorläufer zu dem internationalen Marktrechte und Marktgerichte finden."

Of ancient
origin.

This institution is undoubtedly of high antiquity. In some form or other it certainly existed at the time of the earliest Latin confederation, when various controversies between the federal States were certainly submitted to the recuperators. Huschke, however, attributes the origin of the court to a later epoch, deriving it from the institution of the college of fetials.¹ But this opinion is unjustifiable; as Voigt observes, it is of a purely arbitrary character, and is not backed up by any good ancient authority.²

Definition.

A substantial portion of modern conclusions and conjectures respecting the function of the recuperators is based on the definition of Aelius Gallus, as reported by Festus, who emphasizes their duties in determining claims pursuant to an existing convention. "Reciperatio est, ut ait Gallus Aelius, cum inter populum et reges nationesque et civitates peregrinas lex convenit quomodo per reciperatores reddantur res reciperenturque resque privatus inter se persequantur."³

Constitution of
the court.

It appears that the court of recuperators consisted of an odd number of judges—five or seven being customary—comprising an equal number—two or three, as the case may be—chosen from each of the parties to the convention, together with one other from some third community, who was to officiate as referee or umpire during the course of the judicial proceedings. In its earlier history, at all events, the court was undoubtedly a mixed tribunal of international jurisdiction, a kind of permanent arbitral court,—that is permanent in the sense that its judicial cognizance endured as long as the particular convention subsisted; and as such it exercised a great influence on the subsequent develop-

¹ Cf. Richter's *Krit. Jahrbuch* (1837), in a review of Sell, *op. cit.* vol. i. pp. 865, 876 *seq.*, 883 *seq.*

² Voigt, *Das jus naturale* . . . vol. ii. note 86a: ". . . Insbesondere aber ist es rein willkürlich und ohne alles quellenmässige Fundament, wenn Huschke . . . das Institut der Recuperatoren in ein derivatives Verhältniss zu den Fetialen setzt."

³ Festus, ed. Müller, p. 274.

ment of arbitration proper. It had no fixed meeting-place, but probably sat in the town where the international transactions in dispute had been concluded,—that is, the *forum loci actus*. The *formula* was not taken from the *legis actiones*, the civil statute-process, but was granted by a magistrate of the town in which the court sat. This *formula* could scarcely be furnished by the private law of either of the communities in question, as it necessarily implied a wider jurisprudence, and an international character. Moreover, the procedure adopted seems to have been simpler, more expeditious, more flexible, and far less formal than in the case of the various forms of statute-process, such as the *sacramentum*, the *condictio*, and the rest. Accordingly, considerations of *bona fides* often played a more important part therein than the principles of the *ius strictum*. And so, from these circumstances alone, it may well be concluded—in opposition to writers like Hartmann¹—that the origin of this institution of recuperators is not exclusively Roman. It is not unreasonable to suppose that it was due to the general desire to mitigate the stringency of ancient private law with regard to aliens and their claims, and to the inevitable recognition—subconscious if not fully explicit—that peace, and not war, is, after all, the normal condition of civilized peoples.

Rules of
equity.

We are not acquainted with the exact principles or propositions of law in accordance with which decisions were pronounced; but it is highly probable that the respective conventions laid down certain determining rules and provisions, and that in cases presenting some peculiarity or difficulty in the surrounding circumstances considerable latitude was allowed to the judges, who, no doubt, were guided by self-evident rules of equity in their efforts to effect a substantive reconciliation between the laws of the communities in question. And, as Gaius says, actions instituted before

¹ O. E. Hartmann, *Der ordo judiciorum und die judicia extraordinaria der Römer* (Göttingen, 1859), pt. i. pp. 229 seq.

recuperators were later supported by magisterial authority, "imperio vero continentur recuperatoria."¹

Forum contractus.

Apart from other considerations, it would appear from the texts of certain treaties—as, for example, from that given by Dionysius as to the noteworthy alliance established between Rome and the thirty cities of the Latin confederation, 493 or 492 B.C.²—that the recuperators sat in the city where the engagement, which gave rise to the difference, was concluded. Thus the fourth clause of this convention is to the effect that disputes arising out of private contracts between their respective citizens shall be determined within ten days in the city where such agreements were made,—τῶν τ' ἰδιωτικῶν συμβολαίων αἱ κρίσεις ἐν ἡμέραις γιγνέσθωσαν δέκα, παρ' οἷς ἂν γένηται τὸ συμβόλαιον.³

Had the recuperators criminal jurisdiction?

Some writers have inferred from the above-cited definition of Aelius Gallus that criminal offences were included in the jurisdiction of the court of *recuperatores*. But, apart from certain duties relating to the extradition of malefactors, it is difficult to see how this conclusion can be justified. M. Fusinato, following Huschke,⁴ emphatically asserts that they possessed no penal competence, and he bases his opinion on the ground of the fundamental nature of the institution, its name, the definition of Aelius Gallus, and other general considerations.⁵ It was only after the accused party had been found guilty of a criminal offence by another competent court, that the recuperators were charged in their capacity as expert assessors to estimate the amount of damage inflicted. Sometimes they were simply directed to determine the sum to be paid by the defendant if and when he should be elsewhere found guilty. As

¹ *Inst.* iv. 105.

² See *supra*, pp. 33 *seq.*

³ *Dion. Hal.* vi. 95.

⁴ *Krit. Jahrb.*, *loc. cit.* pp. 879 *seq.*

⁵ G. Fusinato, *Dei feziali*, *loc. cit.* p. 556: "E mia opinione è che ai recuperatori debba essere negata ogni competenza in cause penali. E a ciò mi persuade soprattutto il carattere dell' istituto recuperatorio, la sua denominazione, la definizione d' Elio Gallio, e molte altre considerazioni d' indole più generale. . . ."

the writer referred to insists, the essence of a judicial examination is to determine the culpability or innocence of the accused party, and this function was not extended to the recuperators.¹

There was a certain analogy between the recuperators and the fetial magistrates, especially with regard to their intervention in extradition proceedings. It was the duty of both—though exercised in different ways—to procure the punishment of offences committed by aliens against Roman citizens, and by the latter against the former, or to exact due compensation for wilful failure to perform existing obligations. The technical expression usually applicable to the recuperators as indicating their function is *res recuperare*, to recover what is due, to assess the amount of damage to be recovered, whilst the term *res repetere*, to demand satisfaction, is more proper to the fetials.² This resemblance between the two kinds of officials is really of a superficial nature, and has, in some quarters, been exaggerated even to the extent of regarding them as identical. Thus Collmann maintained³—an opinion based on the alleged analogy between the expressions ‘*res repetere*’ and ‘*res reddantur recipere*.’ Now terminology in ancient times—as at any other time—was not subjected to a strict pigeon-hole application, purporting to be definitive and exclusive. Words were often used with a flexibility necessarily demanded by the intrinsic significance of the synthetic and analytic

Analogy
between the
recuperators
and the fetials.

¹ *Ibid.*: “. . . Il processo recava con se necessariamente l’investigazione sulla colpevolezza del convenuto, ma di questa colpevolezza penale, secondo quanto dissi, non dovevano preoccuparsi i recuperatori, la cui sentenza non era già diretta a pronunziare una condanna, ma a determinare la quantità della somma che il convenuto, se ritenuto colpevole, doveva pagare.”

² Cf. Huschke, *De recup.* (*loc. cit.*) p. 215: “Quocirca recuperatores similes erant, tantum quod illi pacis tempore ex foedere *res recuperabant*, hi [that is, the fetials], si ordinaria iuris persecutio denegata erat, *res repetebant*.”

³ J. A. Collmann, *De Rom. jud. recup.* p. 28, note 1.

processes of cognition and apperception. Thus, by the fetials taken in the collective sense is understood the college of twenty members; but considered more individually, and in direct reference to their particular capacity, function, or mission, a fetial magistrate is sometimes designated *pater patratus* or *legatus*, at other times *nuntius publicus*, *orator*,¹ and even *recuperator* (in the familiar, non-technical sense of 'recoverer').

Distinction
between the
fetials and the
recuperators.

The essential function of the fetials was to make a formal demand for satisfaction,—‘*rerum repetitio*,’² and, failing due compliance therewith, to declare war with all the necessary solemnities. Hence their office was mainly of a diplomatic character, and only secondarily (though intrinsically very important) of a judicial nature. The recuperators, on the contrary, constituted a purely juridical institution, resembling more or less an arbitral tribunal. Again, the recuperators were called in for the most part in accordance with an express convention; their duties had reference mainly to *civitates foederatae*; but the fetials intervened in various relationships of Rome with other communities, whether or not there were existing alliances or treaties with them. The institution of recuperators owed its origin to the exigencies of commercial intercourse; the institution of fetials had its source in religion pervading the greater part of ancient international law, and in the spontaneous conception of fundamental duties inevitably imposed on mankind.³ In a word, we may say that the fetials were mainly sacred representatives of the Roman people, ‘*sacerdotes populi Romani*,’ or ‘*publici legati*,’ whilst the recuperators were judges of private disputes

¹ Cf. Varro, *De vita pop. rom.* ii. 13; and see vol. i. pp. 304 *seq.* on ambassadors.

² Cf. Liv. vii. 32; and see vol. i. p. 364, and *infra*, chap. xxvi.

³ Thus Fusinato points out that the religious idea was the real cause of the creation of the college of fetials, and the basis of their very *raison d'être*: “. . . Fu veramente l’idea religiosa la causa della loro creazione, e nella religione essi ritrovano il loro vero e maggior fondamento” (*Dei feziali . . .*, *loc. cit.* p. 558).

between citizens of different States,—“*iudices di privati controversie civili fra cittadini di stati differenti.*”¹ And so it cannot be strictly said that there existed a direct and constant relationship between the ‘*rerum repetitio*’ of the fetials, and the ‘*rerum redditio vel recuperatio*’ of the recuperators; they were two distinct organs of the same system,—as M. Weiss observes, “*deux rouages distincts du même organisme.*”²

¹ Fusinato, *ibid.* p. 558.

² *Le droit fétial . . . , loc. cit.*, p. 474.

CHAPTER XVIII

STATE INTEREST AND BALANCE OF POWER

State interest
and foreign
policy.

IT has already been observed in the foregoing, especially as to the conclusion of treaties, and their infringement or avoidance, that the question of State interest was the supreme consideration in the adjustment of international relationships, though it was often put under cover of juridical organization and formality. This does not by any means imply that amongst the Greeks and the Romans conceptions of political justice and public right did not obtain; nor does it imply, moreover, that such principles had no practical validity. For innumerable examples have already been adduced, which clearly indicate that, at least so far as those cases are concerned, the interests of law and justice were paramount, and were frequently conducive to the entire shaping of international policy. A writer deeply conversant with public affairs and with ancient political conditions says, even in regard to the Homeric epoch: "It was surely a healthful sign of the working of freedom, that in that early age, despite the prevalence of piracy, even that idea of political justice and public right, which is the germ of the law of nations, was not unknown to the Greeks."¹ In general it may be said that theory and practice varied according to place and circumstance; at one time considerations of justice were held to predominate over those of expediency, at another time, under the stress of unexpected conditions, the principle of national utility

¹W. E. Gladstone, *Studies in Homer and the Homeric age* (Oxford, 1858), vol. iii. p. 4.

was taken as the guide in international relationships, and insisted on as furnishing the criterion of a wise foreign policy. The oscillations of power and hegemony counted for much in the adoption of this or that point of view, and in the application of this or that doctrine.

The State was considered omnipotent. Its welfare was the concern of every citizen; and his personal and family interests were held to be ever subservient to those of the commonwealth. Individual liberty and honour were deemed secondary to the glory and independence of the city. The life and the fortune of the subject were to be devoted to the service of his country, and, if need be, sacrificed to further its welfare. Even matters of private life and religion were not thought to be free from the omnipotence of the State.

The State and
the individual.

And so having regard to the well-being of the State, now one practice was adopted, now a contrary one. We find advocates at international congresses and other assemblies advancing arguments and persuasions at one time in favour of this line of conduct, at another time in favour of that. Thus, after the defeat of the Corinthians (who belonged to the Lacedaemonian confederacy) by the Corcyraeans, 435 B.C., the former made more active preparations to retrieve their position. The Corcyraeans alarmed, despatched ambassadors to Athens to propose an alliance with that city, 433 B.C., in spite of the terms of the Thirty Years' Truce. The envoys pointed out that the neutrality of Athens was a mistake, for it left her isolated at the mercy of the Corinthians and their allies. "The policy," they argued, "of not making alliances lest they should endanger us at another's bidding, instead of being wisdom, as we once imagined, has now proved undoubtedly to be weakness and folly."¹ They represented, moreover, that such a step on the part of Athens would scarcely be a violation of the engagement

Conflict
between the
just and the
expedient.

¹Thuc. i. 32: . . . καὶ περίστηκεν ἡ δοκοῦσα ἡμῶν πρότερον σωφροσύνη, τὸ μὴ ἐν ἀλλοτρίᾳ ξυμμαχίᾳ τῇ τοῦ πέλας γνώμῃ ξυγκινδυνεύειν, νῦν ἀβουλία καὶ ἀσθένεια φαινομένη.

with the Lacedaemonians; and even if it were, Athens could not afford to be scrupulous in this matter, for expediency was the indispensable guide. "And whoever thinks that these things which we have urged are expedient, but is afraid that through being persuaded by them he would break the treaty, let him know that his fear, being attended by strength, will cause greater alarm to his enemies; but that his confidence in not having received us being powerless will be less formidable to his foes who are strong."¹ The Corinthians who had also sent an embassy to Athens replied to the arguments of the Corcyraean envoys, appealing to the conditions of the Thirty Years' Truce, and reminding the Athenians that it was on account of the representations of Corinth that the Peloponnesian allies had not assisted the Samians in their recent revolt. "Do not say to yourselves," they urged, "that one thing is just, but that in the event of war another thing is expedient; for the true path of expediency is the path of right. . . . To do no wrong to a neighbour is a more certain source of power than to gain a perilous advantage under the influence of a momentary illusion."²

A similar distinction between the just and the expedient was afterwards made by an ambassador before a general assembly of the Peloponnesian confederates at Sparta, 432 B.C. In view of the inducements of the Corcyraean envoys, Athens had concluded only a defensive alliance with Corcyra, thus hoping to avoid an open infringement of the truce with Sparta. But soon Athens abandoned her neutrality, and aided

¹Thuc. i. 36: καὶ ὅτῳ τάδε ξυμφέροντα μὲν δοκεῖ λέγεσθαι, φοβεῖται δὲ μὴ δι' αὐτὰ πειθόμενος τὰς σπονδὰς λύσει, γνώτω τὸ μὲν δεδιὸς αὐτοῦ ἰσχύην ἔχον τοὺς ἐναντίους μάλλον φοβήσον, τὸ δὲ θαρσοῦν μὴ δεξαμένου ἀσθενὲς ὄν πρὸς ἰσχύοντας τοὺς ἐχθροὺς ἀδέσπερον ἐσόμενον. . . .

²Thuc. i. 42: καὶ μὴ νομίσει δίκαια μὲν τάδε λέγεσθαι, ξύμφορα δέ, εἰ πολεμήσει, ἄλλα εἶναι. τό τε γὰρ ξυμφέρον ἐν ᾧ ἂν τις ἐλάχιστα ἀμαρτάνῃ μάλιστα ἔτεται. . . τὸ γὰρ μὴ ἀδικεῖν τοὺς ὁμοίους ἐχυρωτέρα δύναμις ἢ τῷ αὐτίκα φανερωῖ ἐπαρθέντας διὰ κινδύνων τὸ πλεον ἔχειν.

Corcyra to defeat the Corinthians. At the subsequent congress in Sparta, many of the Peloponnesian confederates alleged grievances against Athens; and the Corinthian envoy depicted in striking terms the ambition, the enterprise, and boldness of Athens, in contrast with Spartan inaction and excessive caution. An Athenian ambassador who happened to be in Sparta on some other affair was present at the meeting, and obtained leave to reply to the allegations hurled against his country. He first of all denied the right of Lacedaemon to interfere in a dispute between his own city and Corinth, and then entered into a general vindication of the Athenian policy, saying in the course of his speech: "An empire was offered to us; can you wonder that, acting as human nature always will, we accepted it and refused to give it up again, constrained by three all-powerful motives, ambition, fear, interest. We are not the first who have aspired to rule; the world has ever held that the weaker must be kept down by the stronger. And we think that we are worthy of power; and there was a time when you thought so too; but now, when you mean expediency you talk about justice. Did justice ever deter anyone from taking by force whatever he could?"¹

Again, in the fifth year of the Peloponnesian war, 427 B.C., Mytilene was compelled to surrender; and debates followed in the Athenian assembly respecting the fate of some thousand prisoners, Mytileneans and others, who had been taken. Cleon, the violent demagogue, took the lead in the proceedings, and proposed the execution of all, remarking: "If, right or wrong, you are resolved to rule, then rightly or wrongly must they be chastised for your good."² Diodotus, however,

¹Thuc. i. 76: ... ἀλλ' ἀεὶ καθεστῶτος τὸν ἦσσω ὑπὸ τοῦ δυνατωτέρου κατείργεσθαι, ἀξιοί τε ἅμα νομίζοντες εἶναι ... ὃν οὐδεὶς πω παρατυχὸν ἰσχυρῶς τι κτήσασθαι προθεὶς τοῦ μὴ πλέον ἔχειν ἀπετράπετο.

²Thuc. iii. 40: εἰ δὲ δὴ καὶ οὐ προσήκον ὁμως ἀξιοῦτε τοῦτο δρᾶν, παρὰ τὸ εἰκός τοι καὶ τούσδε ξυμφόρως δεῖ κολάζεσθαι, ἢ παύεσθαι τῆς ἀρχῆς καὶ ἐκ τοῦ ἀκινδύνου ἀνδραγαθίζεσθαι.

adopted a more moderate attitude, objecting to Cleon's proposal on the ground that the death of the prisoners was neither expedient nor for the interest of the State. "The question for us rightly considered," he stated, "is not what are their crimes, but what is for our interest. If I prove them ever so guilty, I will not on that account bid you put them to death, unless it is expedient. Neither if perchance there be some degree of excuse for them, would I have you spare them, unless it be clearly for the good of the State."¹

The criterion of self-interest.

In reference to the intervention of Athens in Sicilian affairs, Euphemus, the Athenian envoy, replying to the address of Hermocrates of Syracuse to the Camarinaeans, said that nothing was inconsistent which was expedient, and—adverting to the kinship of the Syracusans with the Camarinaeans—that no man was a kinsman who could not be trusted. "In each case," he continued, "we must make friends or enemies, according to circumstances, and here our interest requires, not that we should weaken our friends, but that our friends should be too strong for our enemies. Do not mistrust us. In Hellas we act upon the same principles, managing our allies as our interest requires in their several cases."²

Justice and interest.

It will be remembered that in the argument of Socrates and Thrasymachus as to the nature of justice, the latter advances the doctrine that justice is the interest of the stronger, and the interest of every State; but Socrates points out that the essential thing is to ascertain the true significance of this 'interest.'³ Polemarchus had also suggested the definition that

¹ Thuc. iii. 44 : οὐ γὰρ περὶ τῆς ἐκείνων ἀδικίας ἡμῖν ὁ ἀγών, εἰ σωφρονοῦμεν, ἀλλὰ περὶ τῆς ἡμετέρας εὐβουλίας.

² Thuc. vi. 85 : πρὸς ἕκαστα δὲ δεῖ ἢ ἐχθρὸν ἢ φίλον μετὰ καιροῦ γίγνεσθαι. καὶ ἡμᾶς τοῦτο ὠφελεῖ ἐνθάδε, οὐκ ἦν τοὺς φίλους κακώσωμεν, ἀλλ' ἦν οἱ ἐχθροὶ διὰ τὴν τῶν φίλων ῥώμην ἀδύνατοι ὦσιν. ἀπιστεῖν δὲ οὐ χρή· καὶ γὰρ τοὺς ἐκεῖ ξυμμάχους ὡς ἕκαστοι χρήσιμοι ἐξηγοῦμεθα. . . .

³ Plato, *Rep.* i. 338c.

justice meant doing good to friends and harm to enemies.¹ And in his *Memorabilia* Xenophon relates that Socrates, speaking of brotherly concord, and asking whether to make first advances for effecting a reconciliation was degrading or doing good, remarked, in his ironical manner: "Yet he is thought to be a man deserving of great praise, who is the first to do harm to the enemy and to do good to his friends."² Similarly, there is a passage in Euripides which refers to the lawfulness of inflicting ill on one's adversary in order to enfeeble him as much as possible,—νόμος τὸν ἐχθρὸν δρᾶν, ὅπου λάβης, κακῶς.³ Although these questions (particularly those raised by Socrates' interlocutors) were concerned mainly with private ethics, the sophistical arguments so readily destroyed by Socrates undoubtedly represented the current notions as to State interest, the sanction of necessity, and expediency.

Sometimes the promptings of supreme necessity are found to be irresistible; in which case amongst the ancients, as amongst the modern nations, a certain course of action might be considered permissible which, under different circumstances, would be manifestly illegitimate. Thus, apart from the use of extreme measures in warfare, the repudiation of contractual obligations, and other acts held to be unlawful by international positive jurisprudence, there were also instances of infringements of sacred law committed under the alleged stress of necessity. When the Boeotians accused the Athenians of sacrilege in regard to the Delian temple, and of drawing the sacred water therefrom for ordinary use, the Athenians replied that they could not help doing so; that, at least, they had not made wanton use of the water, for they were compelled to draw it in their defence against the Boeotian aggression on their territory. "When men

The doctrine
of necessity.

¹ *Ibid.* i. 334b.

² Xenoph. *Memorab.* ii. 3. 14: καὶ μὴν πλείστου γε δοκεῖ ἀνὴρ ἐπαίνου ἄξιός εἶναι, ὃς ἂν φθάνη τοὺς μὲν πολεμίους κακῶς ποιῶν.

³ Eurip. *fragm.* 927 (ed. Didot).

were constrained by war," they pleaded, "or by some other great calamity, there was good ground for believing that their offence was pardoned even by the god himself. He who has committed a misdeed involuntarily is permitted a refuge at the altar; for men are said to transgress not when they presume a little in their distress, but when they do evil of their own free-will."¹

Private
morality and
public conduct.

Even Aristides 'the Just,' a man of unselfishness, honesty, and integrity, described by Theophrastus as the 'justest of the Greeks,' is said to have drawn a distinction between private morality and public conduct, on the ground that rules of justice were to be observed between individuals, but that considerations of expediency, of general utility should preponderate in matters of a public or interstatal character.²

Antagonism
between
justice and
expediency.

In reference to the Corcyraean sedition, 427 B.C., Thucydides, in a striking passage, embodying wise reflections on the causes and effects of the revolutionary disposition, points out the great necessity of not confounding selfishness and personal interest with justice and public expediency, nor a narrow party-spirit with true national enthusiasm. "The cause of all these evils," says he, "was the love of power, originating in avarice and ambition, and the party-spirit which is engendered by them when men are fairly embarked in a contest. For the leaders on both sides used specious names, the one party professing to uphold the constitutional equality of the many, the other the

¹ Thuc. iv. 98: ὕδωρ τε ἐν τῇ ἀνάγκῃ κινήσαι, ἣν οὐκ αὐτοὶ ὕβρει προσθέσθαι, ἀλλ' ἐκείνους προτέροισ ἐπὶ τὴν σφετέραν ἐλθόντας ἀμυνόμενοι βιάζεσθαι χρῆσθαι. πᾶν δ' εἰκὸς εἶναι τῷ πολέμῳ καὶ δεινῷ τινὶ κατειργόμενον ξύγγνωμόν τι γίγνεσθαι καὶ πρὸς τοῦ θεοῦ. καὶ γὰρ τῶν ἀκουσίῳ ἀμαρτημάτων καταφυγὴν εἶναι τοὺς βωμοὺς, παρανομίαν τε ἐπὶ τοῖς μὴ ἀνάγκῃ κακοῖς ὀνομασθῆναι, καὶ οὐκ ἐπὶ τοῖς ἀπὸ τῶν ξυμφορῶν τι τολμήσασιν.

² Plut. *Aristid.* 25 (Theophrastus, *frag.* 136): καθ' ὅλον δ' ὁ Θεόφραστος φησὶ τὸν ἄνδρα τοῦτον περὶ τὰ οἰκεία καὶ τοὺς πολίτας ἄκρως ὄντα δίκαιον ἐν τοῖς κοινοῖς πολλὰ πράξαι πρὸς τὴν ὑπόθεσιν τῆς πατρίδος, ὡς συνηῆς ἀδικίας δεομένης.—Cf. Cic. *De offic.* iii. 11.

wisdom of an aristocracy, while they made the public interests, to which in name they were devoted, in reality their prize. Striving in every way to overcome each other, they committed the most monstrous crimes; yet even these were surpassed by the magnitude of their revenges which they pursued to the very utmost, neither party observing any definite limits either of justice or public expediency, but both alike making the caprice of the moment their law. Either by the help of an unrighteous sentence, or grasping power with the strong hand, they were eager to satiate the impatience of party-spirit."¹

Of the view of the supremacy of State interest, and of the practice of subordinating everything else thereto, the Spartans were the most thorough, consistent, and uncompromising advocates. Thus Brasidas, one of the greatest of Spartan commanders, in his harangue to the troops, engaged in the war in Thrace, 422 B.C., observed—no doubt borrowing his doctrine from the contemporary moral philosophers—that the greatest reputation is acquired by those stratagems in which a man deceives his enemies most completely, and does his friends most service.² Lysander, another remarkable Spartan, after his appointment to the supreme command of the Peloponnesian fleet, seems to have adopted the motto that the end justified all means,—no matter how cruel, deceitful, or unscrupulous they were. He preferred expediency and stratagem, as Plutarch says, to justice and openness. "He indeed laughed at those who said that the race of Heracles ought not to make wars by stratagem, saying: 'When the lion's skin will not protect us, we must sew the fox's skin to it.'"³

State interest,
and Spartan
views.

¹ Thuc. iii. 82.

² Thuc. v. 9: καὶ τὰ κλέμματα ταῦτα καλλίστην δόξαν ἔχει ἃ τὸν πολέμιον μάλιστ' ἂν τις ἀπατήσας τοὺς φίλους μέγιστ' ἂν ὠφελήσειεν.

³ Plut. *Lysand.* 7: τῶν δ' ἀξιούντων μὴ πολεμεῖν μετὰ δόλου τοὺς ἀφ' Ἡρακλέους γεγονότας καταγελαῶν ἐκέλευεν "ὅπου γὰρ ἡ λεοντῆ μὴ ἐφικνεῖται, προσπραπτέον ἐκεῖ τὴν ἀλωπεκῆν."

Again, Agesilaus, regarded by the Spartans as an embodiment of their national virtues, held, in reference to taking the side of Phoebidas, that the only thing to be considered was whether such action was of advantage to Sparta. "Yet," adds Plutarch, "in his talk Agesilaus always set a high value upon justice, calling it the first of all virtues."¹ In reply to an appeal from Tachos, King of Egypt (as has already been related), he set out, though he was eighty years of age at the time, to assist him in his revolt against Persia. But, in the absence of the Egyptian king, he changed over to the side of Nectanebis, and helped him to obtain the throne. Plutarch says that he adopted this extraordinary line of conduct, which was a downright piece of treachery, in consideration of the interests of his country,—*ἀτόπου καὶ ἀλλοκότου πράγματος παρακαλύμματι τῷ συμφέροντι τῆς πατρίδος χρησόμενος.*²

Spartan
policy often
condemned.

Very frequently the Spartan iron rule of national expediency called forth the vituperation and reproach of other countries. Thus, in the fifth year of the Peloponnesian war, the Plataeans complaining to the Lacedaemonians of the conduct of the Thebans said (for they cannot have been unconscious of the ironical character of the expression): "If you take your own present advantage and their present hatred to be the measure of justice, you will prove yourselves, not upright and impartial judges, but the slaves of expediency."³

Justice and
necessity.

In 416 B.C. Athens made an expedition against the island of Melos, a colony of Lacedaemon, as it had refused to submit voluntarily to the Athenian hegemony. The Athenian forces encamped on the island,

¹ Plut. *Ages.* 23: ... ὅτι δεῖ τὴν πρᾶξιν αὐτὴν, εἴ τι χρήσιμον ἔχει, σκοπεῖν τὰ γὰρ συμφέροντα τῇ Λακεδαίμονι καλῶς ἔχειν αὐτοματίζεσθαι, κἂν μηδεὶς κελεύσῃ ... καίτοι τῷ λόγῳ πανταχοῦ τὴν δικαιοσύνην ἀπέβαινε πρωτεύειν τῶν ἀρετῶν.

² Plut. *Ages.* 37.

³ Thuc. iii. 56: εἰ γὰρ τῷ αὐτίκα χρησίμῳ ἡμῶν τε καὶ ἐκείνων πολεμίῳ τὸ δίκαιον λήψεσθε, τοῦ μὲν ὀρθοῦ φανείσθε οὐκ ἀληθεῖς κριταὶ ὄντες, τὸ δὲ ξυμφέρον μᾶλλον θεραπεύοντες.

but before commencing active hostilities, they despatched envoys to negotiate with the Melians. In the course of the discussion before the magistrates and other leading men of the island,¹ the Athenian ambassador said: "Well, then, we Athenians will use no fine words; we will not go out of our way to prove at length that we have a right to rule, because we overthrew the Persians; or that we attack you now because we are suffering any injury at your hands. We should not convince you if we did; nor must you expect to convince us by arguing that, although a colony of the Lacedaemonians, you have taken no part in their expeditions, or that you have never done us any wrong. But you and we should say what we really think, and aim only at what is possible, for we both alike know that into the discussion of human affairs, the question of justice only enters where the pressure of necessity is equal, and that the powerful exact what they can, and the weak grant what they must."² Afterwards, in answer to an argument as to the hope of assistance from the Lacedaemonians, the allies of the Melians, the Athenian thus commented on the Spartan character and policy: "The Lacedaemonians are exceedingly virtuous among themselves, and according to their national standard of morality. But in respect of their dealings with others, although many things might be said, a word is enough to describe them,—of all men whom we know, they are the most notorious for identifying what is pleasant with what is honourable, and what is expedient with what is just."³ But the attitude of Athens herself

¹ Thuc. v. 84.

² Thuc. v. 89: . . . τὰ δυνατὰ δ' ἐξ ὧν ἑκάτεροι ἀληθῶς φρονούμεν διαπράσσεσθαι, ἐπισταμένους πρὸς εἰδότας ὅτι δίκαια μὲν ἐν τῷ ἀνθρώπῳ λόγῳ ἀπὸ τῆς ἴσης ἀνάγκης κρίνεται, δυνατὰ δὲ οἱ προύχοντες πρᾶσσοῦσι καὶ οἱ ἀσθενεῖς ξυγχωροῦσιν.

³ Thuc. v. 105: Λακεδαιμόνιοι γὰρ πρὸς σφᾶς μὲν αὐτοὺς καὶ τὰ ἐπιχώρια νόμιμα πλείστα ἀρετῇ χρώνται· πρὸς δὲ τοὺς ἄλλους πολλὰ ἂν τις ἔχων εἰπεῖν ὡς προσφέρονται, ξυνηλῶν μάλιστα ἂν δηλώσειεν ὅτι ἐπιφανέστατα ὧν ἴσμεν τὰ μὲν ἡδέα καλὰ νομίζουσι, τὰ δὲ ξυμφέροντα δίκαια.

was made no less apparent by the remark of her envoy in reply to the Melian representatives: "You do not see that the path of expediency is safe, whereas justice and honour involve danger in practice."¹

Polybius on
State interest.

Polybius,—one of the few ancient historians possessing a real grasp of men and things, with a broad philosophic outlook, and a clear recognition of the force, the significance, and the applicability of the law of nations,—while condemning all conduct actuated by merely personal interest or selfish aggrandizement, yet admits the supremacy of State interest. In the case of Aristaenus (which has already been considered),² who induced the Achaeans to relinquish their alliance with Philip and join that of Rome, Polybius maintains that, far from being a traitor, he was a wise opportunist, in having thus secured the safety of his countrymen; and, moreover, that a like principle of action would be perfectly defensible in the case of all others who adapted their policy and measures to the exigency of time and circumstances,—ὅσοι κατὰ τὰς τῶν καιρῶν περιτάσεις τὰ παραπλήσια τούτοις πολιτεύονται καὶ πράττουσιν.³

The principle
of 'utility' in
Rome.

In Rome, likewise,—particularly in her later history—considerations of utility not infrequently triumphed when brought into conflict with those of honour and impartial justice. Roman philosophers and orators were prone to draw fine distinctions, not always free from casuistical subtlety, between the expedient and the honourable, and to emphasize their antagonism.⁴ Various instances of the predominance of the principle of *utilitas* have already been adduced in the foregoing. Of such examples one of the most striking is found

¹ Thuc. v. 107: οὐκ οἶσθε τὸ ξυμφέρον μὲν μετ' ἀσφαλείας εἶναι, τὸ δὲ δίκαιον καὶ καλὸν μετὰ κινδύνου δρᾶσθαι.

² See *supra*, pp. 30 *seq.*

³ Polyb. xviii. 13.

⁴ Cf. Cic. *De offic.* i. 3. 9: "Tertium dubitandi genus est, quum pugnare videtur cum honesto id, quod videtur esse utile. Quum enim utilitas ad se rapere, honestas contra revocare ad se videtur, fit ut distrahatur deliberando animus adferatque ancipitem curam cogitandi."

in the discussion in the senate concerning the truce granted to Perseus. The oldest senators, indeed, mindful of Roman deeds of honour and generosity in the past, criticized in reproachful terms the action of the deputies in having deceived Perseus. But, says Livy, the opinion of that section of the senate prevailed in whose eyes honour was held to be subservient to utility,—“*vicit tamen ea pars senatus, cui potior utilis, quam honesti cura erat.*”¹

Towards the end of the Republic, and in the time of the emperors, the Romans, in their relationships with foreign States, considered the demands of necessity, when identical with State interest, as supreme. It became a current doctrine of political as well as of moral philosophy that law was merely a creature of circumstance and necessity :

“*Honesta lex est temporis necessitas.
Necessitas dat legem, non ipsa accipit.*”²

But in the actual moulding of the policy of universal conquest and imperial expansion, such maxims—admissible enough if construed dispassionately—were subjected to the narrowest interpretation for the purpose of advancing the interests of Rome at the expense of other nations.

In most of the States of antiquity the principle of ^{Balance of} balance of power was understood and often applied in ^{power.} practice. In ancient China there were frequent combinations of princes established expressly for the purpose of resisting the preponderance of mighty States, of checking their aggressions, and of affording protection to weaker communities. Hume, tracing our more developed modern conceptions to ancient doctrines and practices, says : “It is a question whether the *idea* of ^{In the East.} the balance of power be owing entirely to modern

¹ Liv. xlii. 47.

² Publilius Syrus (fl. c. 45 B.C.), *Sententiae*.—Cf. also

“*Observat nullam res urgentissima legem ;
Legibus impositis omne necesse caret.*”

policy, or whether the *phrase* only has been invented in these later ages? It is certain that Xenophon in his *Institution of Cyrus* (i. 5. 3) represents the combination of the Asiatic powers to have arisen from a jealousy of the encreasing force of the Medes and Persians; and though that elegant composition should be supposed altogether a romance, this sentiment, ascribed by the author to the eastern princes, is at least a proof of the prevailing notion of ancient times.”¹ Hume refers to the King of Assyria, who is represented as having called on a union of his subject peoples, namely the Lydians, the Cappadocians, the Phrygians, the Paphlagonians, the Indians, the Carians, and the Cilicians, to prevent the growing power of the combined Medes and Persians. For the latter “were likely, if he did not prevent them and break their power, to subdue all the neighbouring nations by attacking them one after another.”²

Aim of the
Peloponnesian
confederacy.

Reference has already been made to the general assembly of the Peloponnesian confederacy at Sparta, the complaints there made by various States as to the arbitrary proceedings of Athens, her dangerous predominance, and her concealed desire to undermine the independence of free communities and transform them into her subjects. The object of the league was, therefore, to put a check on Athenian ascendancy, and make secure the liberty and sovereignty of the lesser States. Thucydides, referring to the length of the Peloponnesian war and its numerous calamities, suggests that its real, though unavowed, cause was the rapid growth of the Athenian power, τοὺς Ἀθηναίους ἡγοῦμαι μεγάλους γιγνομένους, which alarmed the Lacedaemonians and compelled them to take warlike measures.³

¹ *Of the balance of power* (in *Essays*, ed. T. H. Green and T. H. Grose, London, 1875, vol. i. pp. 348 *seq.*).

² Xenoph. *Cyrop.* i. 5. 3: . . . καὶ κινδυνεύουσιν, εἰ μὴ τις αὐτοὺς φθάσας ἀσθενῶσι, ἐπὶ ἓν ἕκαστον τῶν ἔθνων ἰόντες καταστρέψασθαι.

³ Thuc. i. 23: τὴν μὲν γὰρ ἀληθεστάτην πρόφασιν, ἀφανεστάτην δὲ λόγῳ, τοὺς Ἀθηναίους ἡγοῦμαι μεγάλους γιγνομένους καὶ φόβον παρέχοντας τοῖς Λακεδαιμονίοις ἀναγκάσαι ἐς τὸ πολεμεῖν.

After the peace of Antalcidas, 387 B.C., Athens was already on the decline, and Sparta was quickly gaining power. Thebes at this time offered the greatest opposition to the Spartans. The latter, having designs on Thebes, continued their aggressions in Boeotia; they reduced Mantinea, and interfered in the Olynthian confederation, 383 B.C. Hence Thebes entered into an alliance with Olynthus. But the Lacedaemonians succeeded in entering the city of Thebes; they seized the Cadmea (the Theban Acropolis), compelled the Thebans to join their confederacy, forced Olynthus to capitulate, 379 B.C., and dissolved the Olynthian league. Thus a great blow was inflicted on Greece; for the Olynthian union might have served as an effective counterpoise to the increasing might of Macedon. Now Sparta was at the highest pinnacle of her power; but she was unpopular in Greece, on the one hand, in consequence of her harshly administered dominion, and, on the other, because she was leagued with the enemies of Hellenic liberty,—with Persia, with Amyntas of Macedon, and with Dionysius of Syracuse. A revolution soon followed in Thebes. The Spartans were expelled from the Cadmea; but their vigorous preparation of a large expedition against Thebes terrified the Athenians, who entered into an alliance with the threatened city, and declared war against Sparta, 378 B.C. Subsequently, the Athenian confederation was reorganized. The Theban arms on land, and the Athenian fleet progressed favourably; and Sparta found herself obliged to solicit Persian assistance. But owing to the increasing jealousy of Thebes, which had recently destroyed the restored city of Plataea, Athens was desirous of peace, and opened negotiations with Sparta. A congress was accordingly opened in this city in 371 B.C.; a peace—usually designated the peace of Callias, from the name of the principal Athenian ambassador—was there agreed upon,¹ the basis of which was the principle declared in the peace of

Efforts to attain sovereignty in conflict with the desire for balance of power.

Frequent formation of alliances to prevent inordinate power of ambitious States.

¹ Cf. Diodor. xv. 50; Aeschin. *De fals. leg.* 9.

Antalcidas, which had professed to establish the independence of the Greek cities. Henceforth, therefore, the independence of the various Greek States was to be recognized, the armaments of the combatants were to be disbanded, and the Spartan harmosts and garrisons dismissed. While an exclusive dominion was denied both to Athens and Sparta, they yet agreed to acknowledge each other's predominance, that of Athens on sea, that of Sparta on land; but such predominance equally in the case of both of them was never to be asserted aggressively, and never to be assumed to the detriment of any State's autonomy. Sparta ratified the treaty for herself and her allies; but Athens took the oath for herself alone, and was followed separately by her confederates. Epaminondas, the distinguished Theban delegate, refused to sign except on behalf of the entire Boeotian league, maintaining that the right of Thebes to exercise the hegemony of Boeotia rested on as good a basis as Sparta's claim to the sovereignty of Laconia, —which, he held, was derived from the power of the sword. Agesilaus became infuriated, and, addressing Epaminondas, exclaimed: 'Will you or will you not leave each Boeotian city independent?' To which the Theban envoy at once replied: 'Will you leave each of the Laconian towns independent?' Agesilaus made no answer, but directing the name of the Thebans to be struck out of the treaty, proclaimed them excluded from it; and thus the conference came to an end.¹ The prevailing feeling in Sparta was now to crush Thebes. Accordingly Cleombrotus invaded Boeotia, and seized the port of Creusis; but the Thebans soon gained a signal victory at Leuctra (371 B.C.). The Thebans then solicited and obtained the aid of Jason of Pherae, the commander (ταγός) of the united Thessalian forces,

¹ Cf. Xenoph. *Hell.* vi. 3; Plut. *Ages.* 28.—The accounts given by these two writers present certain discrepancies.—The reports of Pausanias (ix. 13. 2) and Diodorus (xv. 38) probably refer to these proceedings, though other dates are assigned by them to their narratives.

upon whom Macedon was partially dependent. Thebes now rose rapidly, and many communities, such as the Phocians, the Euboeans, the Locrians, the Malians, the Heracleots, and the Orchomenians, sought her alliance. Jason's influence was likewise increasing; but the Delphians, alarmed at his intention to usurp the presidency and direction of the Pythian festival—the prerogatives of the Amphictyonic Council—assassinated him. Athens, afraid of the Theban ascendancy, and with a view of preventing her supremacy as well as that of Sparta, established, on the basis of the conditions laid down in the peace of Antalcidas, the Arcadian league, which was joined by the majority of the Peloponnesian communities. Epaminondas next invaded the Peloponnese, and secured the aid of the Arcadians, as well as of the Argives and Eleans. Having been repelled, he consolidated the Arcadian confederation, founded Megalopolis, and restored the independence of the Messenians. At this point Athens entered into an alliance with Sparta (369 B.C.), who waived all claims to superiority and hegemony. It was further agreed that the command both on land and sea should alternate every five days between the contracting parties, and that their united forces should occupy Corinth, and guard the passes of the Oean mountains across the isthmus, so as to prevent the Thebans from again invading Peloponnesus. And so on did the oscillation of alliances continue on this side or that, as a counterpoise to the inordinate ambition and menacing power of one State or another. "But whether we ascribe," as Hume observes, "the shifting of sides in all the Grecian republics to *jealous emulation* or *cautious politics*, the effects were alike, and every prevailing power was sure to meet with a confederacy against it, and that often composed of its former friends and allies."¹

With regard to this constant desire to preserve the balance of power, the same writer says: "Whoever

Demosthenes
on balance of
power.

¹ *Loc. cit.* p. 349.

will read Demosthenes' oration for the Megalopolitans may see the utmost refinements on this principle that ever entered into the head of a Venetian or English speculatist."¹ In 353 B.C. two embassies arrived in Athens, one from Lacedaemon, the other from Megalopolis, each to solicit aid in the approaching war. The Spartan ambassadors reminded the Athenians of their former alliance, and pointed out the advantage that would accrue to them from the plan of Archidamus, by which their old enemy Thebes would be crushed. The Megalopolitan envoys urged the justice of their own cause, and the danger that would be consequent on the revival of Spartan supremacy. Demosthenes espoused the cause of the Megalopolitans. He argued that, eliminating all animosity or prejudice against each of the contending parties, the question must be settled in accordance with the urgings of necessity, considered in reference to the interests of justice and the good of Athens. Justice demanded that no community should be oppressed by another. The alliance of the Athenians with Sparta had been established on this principle, and they had saved her from destruction; but if the Lacedaemonians entered on ambitious enterprises inconsistent with the spirit of their alliance, his countrymen were therefore perfectly justified in breaking it off. It was the interest of Athens, Demosthenes emphasized, that neither Sparta nor Thebes should possess too great power. And the subjugation of Megalopolis would lead to the reconquest of Messenia, in the event of which the balance of power in the Peloponnese would be destroyed. "No man," his argument continued, "will deny that it is for the advantage of Athens that both the Lacedaemonians and our Theban neighbours should be weak. But, if we may form a conjecture from representations repeatedly advanced in our assembly, it appears that things are thus circumstanced,—the Thebans will be weakened by the re-establishment of Orchomenus,

¹ *Ibid.*

Thespieae, and Plataea; the Lacedaemonians will become powerful again, if they subdue Arcadia and take Megalopolis. We must, therefore, mind that we suffer not the one people to grow mighty and formidable, before the other has become weak; that the power of Lacedaemon do not increase, unobserved by us, in a greater degree than it is well for that of Thebes to be reduced. For we shall hardly say that we would rather have the Lacedaemonians as our rivals than the Thebans. Our solicitude is not concerned with this merely; for we are anxious that neither of them may have the means of injuring us; and so shall we enjoy the best security.”¹ Demosthenes does not by any means lose sight of considerations of justice; but in adapting political conduct to satisfy the demands of justice, State interest must not be thereby sacrificed. Our purposes and our actions, he declares, should always be just; but at the same time we must be careful that they are attended with advantage, — δει δὲ σκοπεῖν μὲν καὶ πράττειν ἀεὶ τὰ δίκαια, συμπαρατησεῖν δ’ ὅπως ἅμα καὶ συμφέροντα ἔσται ταῦτα.² Hence, the rise of Spartan power must by every possible means be prevented. “I cannot but regard it as perilous to our State, if the Lacedaemonians should take Megalopolis and again become strong.”³ “Now if you reject the

¹ Demosth. *Pro Megalop.* 4-5: Οὐκοῦν οὐδ’ ἂν εἰς ἀντίποι ὡς οὐ συμφέροι τῇ πόλει καὶ Λακεδαιμονίους ἀσθενεῖς εἶναι καὶ Θηβαίους τουτουσί. ἔστι τοίνυν ἐν τινι τοιούτῳ καιρῷ τὰ πράγματα νῦν, εἴ τι δεῖ τοῖς εἰρημένους πολλάκις παρ’ ὑμῖν λόγοις τεκμήρασθαι, ὥστε Θηβαίους μὲν Ὀρχομενοῦ καὶ Θεσπιῶν καὶ Πλαταιῶν οἰκισθεισῶν ἀσθενεῖς γενέσθαι, Λακεδαιμονίους δ’, εἰ ποιήσονται τὴν Ἀρκαδίαν ὑφ’ ἑαυτοῖς καὶ Μεγάλην πόλιν ἀναιρήσουσι, πάλιν ἰσχυροὺς γενήσεσθαι. σκεπτέον τοίνυν μὴ πρότερον τούσδε γενέσθαι φοβεροὺς καὶ μεγάλους ἕασωμεν ἢ κείνοι μικροὶ γενήσονται, καὶ λάθωσιν ἡμᾶς πλείονι μείζους οἱ Λακεδαιμόνιοι γενόμενοι ἢ ὅσῳ τοὺς Θηβαίους ἐλάττους συμφέροι γενέσθαι. οὐ γὰρ ἐκεῖνό γ’ ἂν εἴποιμεν, ὡς ἀνταλλάξασθαι βουλοίμεθα ἀντιπάλους Λακεδαιμονίους ἀντὶ Θηβαίων, οὐδὲ τοῦτ’ ἔσθ’ ὃ σπουδάξομεν, ἀλλ’ ὅπως μηδέτεροι δυνήσονται μηδὲν ἡμᾶς ἀδικεῖν. οὕτω γὰρ ἂν ἡμεῖς μετὰ πλείστης ἀδείας εἴημεν.

² *Ibid.* 10.

³ *Ibid.* 22: οὐ γὰρ ἔγωγ’ ἀδεῆς τοῦθ’ ὑπολαμβάνω τῇ πόλει, τὸ λαβεῖν Μεγάλην πόλιν Λακεδαιμονίους καὶ πάλιν γενέσθαι μεγάλους.

appeal of the Megalopolitans, and should their city then be destroyed, and themselves dispersed into villages, the Lacedaemonians at once become powerful; but should they chance to escape—as unexpected events do happen—they will in justice become steadfast allies of Thebes.”¹

Subsequent events furnished a clear justification of Demosthenes’ political wisdom. He failed to persuade the Athenians to follow his counsel. They joined the alliances of neither of the contending parties. Archidamus commenced war against the Arcadians, who were joined by Argos, Sicyon, and Messene. In the same year, 352 B.C., the Phocian general, Onomarchus, having been defeated by Philip near the Gulf of Pagasae, and slain in the encounter, the Thebans were enabled to send forces in aid of their former allies. The Spartans were reinforced by some Phocian mercenaries; and for two years the war continued with varied success, when a truce was made. The Arcadian confederacy, however, alienated from Athens, and in view of the imminent Spartan invasion, appealed to Philip for assistance,—thereby establishing Macedonian influence in the Peloponnese. And so with the battle of Chaeronea, 338 B.C., the freedom of Greece was virtually crushed.

Other combinations to preserve a political balance.

Subsequently we find similar alliances, coalitions, or combinations amongst the eastern peoples to prevent the acquisition of too great power by any State or ruler. “The successors of Alexander showed great jealousy of the balance of power.”² On the death of Alexander, a partition of his dominions was effected by which Philip Arrhidaeus was declared king, the government of Macedonia and Greece divided between Antipater and Craterus, Egypt and the adjacent countries given to Ptolemy, Phrygia proper, Lycia, and Pamphylia to

¹ Demosth. *Pro Megalop.* 30: ὅτι μὴ προσδεξαμένων μὲν ὑμῶν τοὺς Μεγαλοπολίτας εἰάν μὲν ἀναιρεθῶσι καὶ διοικισθῶσιν, ἰσχυροῖς Λακεδαιμονίοις ἔστιν εὐθὺς εἶναι, εἰάν δὲ σωθῶσιν ἄρα ὡς ἦδη τι καὶ παρ’ ἐλπίδας ἐξέβη, βέβαιοι σύμμαχοι Θηβαίων δικαίως ἔσονται.

² Hume, *loc. cit.* p. 350.

Antigonus, the Hellespontine Phrygia to Leonatus, the satrapy of Paphlagonia and Cappadocia to Eumenes, and Thrace to Lysimachus. By the last directions of Antipater, Polysperchon, one of the veteran officers of Alexander, was appointed chief administrator. In order to offer effective opposition to his rival Cassander, the son of Antipater, Polysperchon determined to enlist the sympathy of the various States in Greece, and to subvert there the Antipatrian oligarchies. Accordingly, after the death of Antipater (319 B.C.), he drew up a proclamation at Pella, where envoys had assembled from most of the Greek States, and issued it as an official circular, in the name of the dynasty, with the object of rallying the Hellenic forces round Macedonia. Diodorus has preserved this document, which is described by Egger as unique in the diplomatic annals of antiquity, —“en son genre, un document unique dans les annales diplomatiques de l'antiquité.”¹ It spoke of the kindly disposition of Philip and Alexander towards Greece, the intention to restore the political constitution of each city, the recall and amnesty of exiles, and the recovery of their property; and concluded by directing all the Greek States to pass decrees forbidding every one to bear arms or otherwise assume a hostile character against the empire, under penalty of banishment and confiscation of property.² By the year 316 B.C. Antigonus had become master of Asia, and the most powerful of Alexander's successors. Hence, on account of his growing might and ambitious projects, a general coalition was established against him, 315 B.C. Thus, Diodorus relates that Cassander, who was at the head of Macedon, despatched ambassadors to Asia to Antigonus with a view to bringing about a reconciliation and peace. But the latter fiercely answered that he would make no peace unless Cassander delivered every-

¹ *Traité publicis*, p. 97.

² Diodor. xviii. 56: ποιήσασθαι δὲ δόγμα πάντας τοὺς Ἑλληνας, μηδένα μῆτε στρατεύειν μῆτε πράττειν ὑπεναντία ἡμῖν· εἰ δὲ μὴ, φεύγειν αὐτὸν καὶ γενεὰν καὶ τῶν ὄντων στέρεσθαι.

thing into his hands. Cassander, thereupon, having consulted with Lysimachus, sent envoys to Ptolemy and to Seleucus giving them an account of the proud answer of Antigonus, and representing to them "that they were all in equal danger by this war,—for if Antigonus gained Macedonia, he would presently swallow up the rest; that he had on several occasions given clear proof of his covetousness and ambition; and that he would have no one to participate with him in any part of the empire; and hence it was expedient that they should all unite against him."¹

Similarly, in the conflict between the Achæan league (under the leadership of Aratus) and Sparta, Ptolemy Euergetes transferred his assistance from the former to the latter in the hope of thus being able to counter-balance more effectively the power of Antigonus Gonatas of Macedonia. As Polybius says: "Ptolemy despairing of retaining the friendship of the Achæan league, began to furnish Cleomenes with supplies, which he did with a view of setting him up as a foil to Antigonus, thinking the Lacedæmonians offered him better hopes than the Achæans of being able to thwart the policy of the Macedonian kings."²

In connection with Roman history, and even in the relationships of the various States in early Italy, we do not find such clear manifestations of the principle of balance of power as in the case of the Hellenic communities. The power of Rome kept on advancing too

¹ Diodor. xx. 106: . . . καὶ τὸν ἐκ τοῦ πολέμου κίνδυνον κοινὸν εἶναι πάντων διδάσκοντες. τῆς γὰρ Μακεδονίας κρατήσαντα τὸν Ἀντίγονον εὐθὺς ἀφελείσθαι καὶ τῶν ἄλλων τὰς βασιλείας· δεδωκέναι γὰρ αὐτὸν πείραν πλεονάκις ὅτι πλεονέκτης ἐστὶ καὶ πάσαν ἀρχὴν ἀκοινώνητον ποιεῖ. συμφέρον οὖν ἅπαντας συμφρονῆσαι καὶ κοινῇ πρὸς Ἀντίγονον ἐπανελέσθαι πόλεμον.

² Polyb. ii. 51: ἐπεὶ δὲ Πτολεμαῖος μὲν, ἀπογνοὺς τὸ ἔθνος, Κλεομένην χορηκεῖν ἐπεβάλλετο, βουλόμενος αὐτὸν ἐπαλείφειν ἐπὶ τὸν Ἀντίγονον, διὰ τὸ πλείους ἐλπίδας ἔχειν ἐν τοῖς Λακεδαιμονίοις, ἤπερ ἐν τοῖς Ἀχαιοῖς, τοῦ δύνασθαι διακατέχειν τὰς τῶν ἐν Μακεδονίᾳ βασιλείων ἐπιβολάς.

surely, her reverses in the political and belligerent vicissitudes of Italy were too few and, on the whole, too insignificant, her handling of subjugated peoples, and the adaptation of their resources and their intrinsic potentiality to her own ends were too firm and thorough, her general policy and diplomatic conduct were far too subtle to make it possible for enemies or jealous sovereigns to establish effective coalitions against her inevitable ascendancy.

The Hannibalic war was not a contest for adjusting or securing the political equilibrium of the more powerful States; it was rather a deliberate conflict for the acquisition of supreme dominion, as Agelaus of Naupactus is reported to have declared at a congress of the Aetolian communities, 217 B.C. "For even now," he assured them, "it is evident to any one who pays even a moderate attention to public affairs, that whether the Carthaginians conquer the Romans, or the Romans the Carthaginians, it is in every way improbable that the victors will remain contented with the empire of Sicily and Italy. They will move forward; and will extend their forces and their designs farther than we could wish."¹ Philip of Macedon preserved a precarious neutrality until Hannibal seemed triumphant, when he entered into an alliance with the Carthaginian general; the object of which was that Philip should help Hannibal to conquer Italy, and that, in return, Hannibal should aid Philip to subjugate Greece.²

Wars of conquest rather than to attain equilibrium.

The practice, however, of establishing combinations so as to counterbalance the inordinate power of this or that ambitious State was applied by Hiero II., king of Syracuse, who is regarded by Hume to have been "the

Policy of Hiero of Syracuse.

¹ Polyb. v. 104.

² Liv. xxiii. 33: "ubi debellatum esset, Italia omnis cum ipsa urbe Roma Carthaginensium atque Hannibalis esset praedaque omnis Hannibali cederet; perdomita Italia navigarent in Graeciam bellumque cum quibus regi placeret gererent; quae civitates continentis quaeque insulae ad Macedoniam vergunt eae Philippi regnique eius essent."—Cf. Polyb. vii. 9, and *supra*, p. 82.

only prince we meet with in the Roman history who seems to have understood the balance of power. . . .”¹ Thus, in the war between Rome and Carthage concerning Sicily, after the victory of Marcus Valerius Maximus over the allied Carthaginian and Syracusan forces, 263 B.C., Hiero concluded peace and a compact of alliance with Rome; and, as Mommsen remarks, it was a judicious policy on his part to join the Romans as soon as it was manifest that their intervention in Sicilian affairs was in earnest, and while there was yet an opportunity to secure peace without making any cessions or sacrifices.² Nevertheless, in spite of his alliance with Rome, he was prepared to assist Carthage in order to render her an effective counterpoise to Rome, and so obtain greater security for his own country. In this connection, Polybius expatiates on the political sagacity of taking such steps as are deemed adequate and necessary for preserving the equilibrium of power. He points out that during the whole course of the war between Rome and Carthage, Hiero showed himself extremely anxious to do everything possible which the Carthaginians asked him, and particularly so at a certain juncture when they were hemmed in on all sides. Such a desire on his part proceeded “from a conviction that it was for his interest with a view alike to his own sovereignty and to his friendship with Rome, that Carthage should not perish, and so leave the superior power to work its own will without resistance.” “And his reasoning,” comments Polybius, “was entirely sound and prudent. It is never right to permit such a state of things; nor to help any one to build up so preponderating a power as to make resistance to it impossible, however just the

Polybius on
balance of
power.

¹ *Loc. cit.* p. 352.

² *Röm. Gesch.* vol. i. p. 515: “Er folgte einer richtigen Politik, indem er, so wie sich gezeigt hatte, dass es den Römern mit dem Einschreiten in Sicilien Ernst war, sich sofort ihnen anschloss, als er noch Zeit war den Frieden ohne Abtretungen und Opfer zu erkaufen.”

cause.”¹ As to this passage of Polybius, Hume observes: “Here is the aim of modern politics pointed out in express terms.”²

In the second Macedonian war, which Rome claimed to have undertaken to expel the Macedonians from Greece and to restore liberty to the Hellenic States, T. Quinctius Flaminius, the consul, who took over the command in 198 B.C., summoned a council of the allies, and desired their opinions respecting the terms of peace to be prescribed. In a brief speech, Amynder, king of Athamania (a district in the Epirus), expressed his opinion to the effect that the conditions of peace ought to be adjusted in such a manner as to secure for Greece sufficient power, even without the need of Roman intervention, to maintain the peace as well as its own liberty, —“*ita componendam pacem esse, ut Graecia etiam absentibus Romanis satis potens tuendae simul pacis libertatisque esset. . .*”³ Some modern writers maintain that Rome in thus intervening to expel Macedon and liberate Greece cherished political designs of a crooked nature. But this too frequent tendency to impugn the honesty of the motives of Rome in almost all her foreign transactions is largely the outcome of an inveterate prejudice due to repeated assertions based on a superficial inquiry. As Mommsen says: “It is only contemptible disingenuousness, or weakly sentimentality, which can fail to perceive that the Romans were entirely in earnest in the liberation of Greece; and the reason why the plan so nobly projected resulted in so wretched a structure is to be sought only in the

Roman
intervention in
Greek affairs.

¹ Polyb. i. 83: ‘*Ἰέρων δ’ αἰὲν μὲν ποτε κατὰ τὸν ἐνεστώτα πόλεμον μεγάλην ἐποιεῖτο σπονδὴν εἰς πᾶν τὸ παρακαλούμενον ὑπ’ αὐτῶν, τότε δὲ καὶ μᾶλλον ἐφιλοτιμείτο, πεπεισμένος συμφέρειν ἑαυτῷ καὶ πρὸς τὴν ἐν Σικελίᾳ δυναστείαν καὶ πρὸς τὴν Ῥωμαίων φιλίαν τὸ σώζεσθαι Καρχηδονίους ἵνα μὴ παντάπασιν ἐξῆ τὸ προτεθέν ἀκονιτὶ συντελεῖσθαι τοῖς ἰσχύουσι, πᾶν φρονίμως καὶ νουνεξῶς λογιζόμενος οὐδέποτε γὰρ χρῆ τὰ τοιαῦτα παρορᾶν, οὐδὲ τηλικαύτην οὐδενὶ συγκατασκευάζειν δυναστείαν, πρὸς ἣν οὐδὲ περὶ τῶν ὁμολογουμένων ἐξέσται δικαίων ἀμφισβητεῖν.*

² *Loc. cit.* p. 352.

³ Liv. xxxiii. 12.

complete moral and political disorganization of the Hellenic people.”¹ And in reference to the frequent accusations brought against Rome of her subtle projects and interventions for attaining to universal dominion, the same historian remarks with much truth, though, it must be confessed, with a certain tinge of partiality or prepossession in favour of the great protagonist of his historical work: “If² . . . we glance back at the career of Rome from the union of Italy to the dismemberment of Macedonia, the universal empire of Rome, far from appearing as a gigantic plan contrived and carried out by an insatiable thirst for territorial aggrandizement, appears to have been a result which forced itself on the Roman government without, and even in opposition to, its wish.”³ He even maintains that the Romans were reluctantly compelled to undertake all their wars, excepting, at least, that concerning Sicily; and that, in any case, “the universal empire of Rome had its ultimate ground in the political development of antiquity in general.”⁴

¹ *Röm. Gesch.* vol. i. p. 720: “Nur von der verächtlichen Unredlichkeit oder der schwächlichen Sentimentalität kann es verkannt werden, dass es mit der Befreiung Griechenlands den Römern vollkommen Ernst war und die Ursache, wesshalb der grossartig angelengte Plan ein so kümmerliches Gebäude lieferte, einzig zu suchen ist in der vollständigen sittlichen und staatlichen Auflösung der hellenischen Nation.”

² From Dickson’s translation.

³ *Röm. Gesch.* vol. i. p. 781: “Werfen wir . . . einen Blick zurück auf den von Rom seit der Einigung Italiens bis auf Makedoniens Zertrümmerung durchmessenen Lauf, so erscheint die römische Weltherrschaft keineswegs als ein von unersättlicher Ländergier entworfenen und durchgeführter Riesenplan, sondern als ein Ergebniss, dass der römischen Regierung sich ohne, ja wider ihren Willen aufgedrungen hat.”

⁴ *Ibid.* p. 782: “Die römische Weltherrschaft beruht in ihrem letzten Grunde auf der staatlichen Entwicklung des Alterthums überhaupt.”

CHAPTER XIX

COLONIES AND THEIR RELATIONSHIP TO THE MOTHER-COUNTRY

ALTHOUGH according to modern conceptions and practice, the questions of colonization, the establishment of colonies, their political and juridical position with respect to the mother-state are not related to international law, in the strict acceptation of the term, yet in ancient times, and particularly in Greece with her marked twofold tendency to disintegration and expansion, independent and autonomous colonies may well be regarded as quite separate States, and therefore the relationship between them as being governed by international law. And if this international law cannot strictly be said to have applied with an ethnic significance (a condition obtaining universally amongst modern nations), its applicability was none the less valid in the sense of interstatal law. Modern practice is based on the theory of territorial sovereignty. Settlement in unoccupied or conquered territory is conceived as an extension of the original colonizing community. But in the case of Greece,¹ for example, where permanent

Colonies and international law.

¹ On Greek colonies, cf. D. Raoul-Rochette, *Histoire critique de l'établissement des colonies grecques*, 4 tom. (Paris, 1815); J. P. Bougainville, *Quels étaient les droits des métropoles grecques sur les colonies, les devoirs des colonies envers les métropoles et les engagements réciproques des unes et des autres?* (Paris, 1745); P. Foucart, *Mémoire sur les colonies athéniennes au cinquième et au quatrième siècles* (in *Mémoires de l'Académie des Inscriptions et Belles Lettres*, Paris, 1878, 1^e série, t. iv. pp. 322-413); Smith's *Dict. of Antiq.* s.v. *Colonia*; Daremberg-Saglio, s.v. *Colonia*.

association and effective union proved impossible, where the political ideal, speculative constructions, and instinctive strivings of the people were directed to the establishment of the city-state as the highest and most efficient political unit, the independence of colonies became inevitable. Besides, there were also practical reasons for this, such as, for instance, the distance from the mother-country, the difficulties of communication, the mixture of population,¹ the different conditions of life, and, in some cases, indeed, a new supervening civilization. So that we not infrequently find that colonies became in a short time more powerful than the mother-country. And yet, as will presently be seen, a certain well-recognized bond existed between them.

Reasons for
colonization.

The main reasons for colonization were the natural restlessness, commercial enterprise, and migration of people in quest of fortune and comfort, and adventure, the clash and hostility of political factions at home, and, further, the deliberate intention on the part of a colonizing State to establish military and agrarian settlements for her special benefit. In the case of colonies founded mainly for military purposes, the political connection was obviously a closer one. Such settlements were in reality largely of the nature of artificial creations for the express purpose of guarding distant dependencies, or instituting a sphere of military influence in the vicinity of an enemy's territory. Thus, there are extant two interesting colonial charters, which clearly indicate that the main object of the foundations in question was a military one. One of these refers to the settlement of Naupactus by the Opuntian Locrians, 460 B.C.,² and the other refers to the Periclean colony sent to Brea in Thrace, 446-4 B.C.³

¹ Cf. Herodot. i. 146 ; iv. 161 ; Diod. xii. 10 ; Thuc. iii. 92. (Thus, when the Lacedaemonians founded the colony of Heraclea, 426 B.C., they not only sent out settlers from amongst their own citizens and the perioeci, but also permitted any Hellenes, not being of the Ionian, Achaean, or certain other races, to accompany them.)

² Hicks, no. 25 ; Michel, 285.

³ Hicks, no. 41 ; Michel, 72.

The Greek colonies may, from a geographical point of view, be arranged into four divisions: (1) those established in Asia Minor and the adjacent islands; (2) those in the western parts of the Mediterranean, in Italy, Sicily, Gaul, and Spain; (3) those in Africa; (4) those in Epirus, Macedonia, and Thrace. The story of their origin and development is interesting, and, moreover, important for gaining more exact knowledge of Greek history and of the political and commercial relations between the Hellenic communities. But from the point of view of international law, there is no necessity to consider them in detail.

As regards the internal constitution of these colonies, and the political relationships between them and their respective founders, they may again be grouped under a twofold classification—the *ἀποικία*, the settlement enjoying autonomy and political independence, and the *κληρουχία* (cleruchy), politically dependent on the mother-state, and, in a sense, an outlying fragment of it, though with some municipal organization of its own. The former kind was the more numerous, and represented the real type of Greek colony. The system of cleruchies¹ (the later stage in the development of the colonial theory in Greece) was practised mainly by the Athenians, who were wont to plant colonies in conquered territory; it was more of the nature of a political experiment, which was abandoned after a trial of some two centuries (570-370 B.C.).

Certain rules had to be complied with, and formalities observed in the establishment of a colony. It was conceived that a band of adventurers, for example, were incapable of founding a colonial settlement; for they were necessarily deemed to be unable to organize themselves, on their own initiative, and on their own account, into a properly constituted city, into a duly constructed political community. The founding of a colony was an

¹The cleruchies corresponded to some extent to the 'coloniae civium Romanorum'; and we find that Plutarch (*Flamin.* 2) translates the latter term accordingly.

act of State on the part of some city, which was thenceforth regarded as the mother-state, and designated the *metropolis*, *μητρόπολις*.¹ The chosen leader was termed the *οἰκιστής*.²

Certain religious proceedings were in the first place indispensable. It was necessary to consult the oracle,³ usually that of Delphi, and obtain the sanction of the god for the projected enterprise. Thus, on the occasion of the establishment by the Spartans of their colony, Heraclea, they first consulted the god at Delphi, who authorized them to proceed,—*πρῶτον μὲν οὖν ἐν Δελφοῖς τὸν θεὸν ἐπήροντο, κελεύοντος. . .*⁴ Next, a charter of incorporation (*τὰ ἀποίκια*) was drawn up by the government of the colonizing State. This set forth the conditions of the grant, and stated the main religious and political relations between the metropolis and the colony in question. In this respect, the document embodying the decree in connection with the founding of Brea is highly instructive.⁵

Rights and obligations.

A certain parental-filial relationship was considered to exist as an ineradicable basis of the connection between the colonizing State and the colony. Thus we find in various Greek writers such terms as *παῖδες* (children), *τέκνα* (offspring), *ἔκγονοι* (descendants), *συγγενεῖς* (kinsmen, relatives), and other like words, applied to colonies. Similarly the founding State was often described as a father or mother. Thus the Athenian, in the sixth book of Plato's *Laws*, says: "I maintain that this colony of ours has a father and a mother, who are no other than the colonizing States. . ."⁶ Herodotus

Ties of kinship.

¹ Cf. Herodot. vii. 51; viii. 31; Thuc. i. 107; iii. 92; vi. 82, etc.

² Cf. Herodot. iv. 159; Thuc. iii. 92; vi. 3, etc.

³ Cic. *De Divin.* i. 1, 3: "Quam vero Graecia coloniam misit in Aeliam, Ioniam, Asiam, Siciliam, Italiam sine Pythio aut Dodonaeo aut Hammonis oraculo?"

⁴ Thuc. iii. 92.

⁵ Cf. Hicks, no. 29 A.

⁶ *Laws*, vi. 754: *φημι ταύτη τῇ πόλει, ἣν οἰκίξεν μέλλομεν, οἶον πατέρα καὶ μητέρα οὐκ εἶναι πλὴν τὴν κατοικίζουσαν αὐτὴν πόλιν. . .*

terms the Athenians *fathers* of the Ionians, "... ἄγειν ἐπὶ τοὺς πατέρας." ¹ A colony was often spoken of also as a *daughter*; ² and two colonies of the same city were called, as between themselves, sister-cities. ³

Hence, the rights and duties of the metropolis and the colony were considered to be the natural sequence of the conception of parentage and kinship. In the passage of Plato above referred to, the Athenian continues: "Well I know that many colonies have been, and will be, at enmity with their parents. But in early days the child, as in a family, loves and is beloved; even if there come a time later when the tie is broken, still, while he is in want of education, he naturally loves his parents and is beloved by them, and flies to his relatives for protection, and finds in them his only natural allies in time of need; and this parental feeling already exists in the Cnosians, as is shown by their care of the new city; and there is a similar feeling on the part of the young city towards Cnosus." ⁴

With regard to bonds of a sacred character, the colony practised the same religion as the mother-state, whose gods it must preserve, though it could have also particular gods of its own. Thus the twelve Ionian cities of Asia Minor, colonies of Athens, celebrated her festivals and other religious solemnities. ⁵ In the same way, the colonies of Corinth and of Naxos ⁶ observed the religious practices of their metropolis. And similarly in early Italy, Rome, as a colony (according to tradition) of Alba Longa, and, through the latter, of Lavinium, offered up annual sacrifices on the Alban Mount, and sent victims to Lavinium. ⁷ The Greek colonies were

Sacred bonds,
and religious
obligations.

¹ Herodot. vii. 51; cf. viii. 22.

² Cf. Thuc. i. 38; Polyb. xii. 10; Dion. Hal. iii. 7; Liv. xxvii. 9.

³ Polyb. xxii. 7, 11; Plut. *Timol.* 15.

⁴ *Laws*, vi. 754 (Jowett's trans.). ⁵ Herodot. i. 147; vii. 95.

⁶ Diodor. xii. 30; Thuc. vi. 3.

⁷ Dion. Hal. i. 66, 67; Plut. *Coriolan.* 28; Varro, *De lingua lat.* v. 144.

obliged to send deputies every year to offer their first-fruits as sacrifices to the guardian deities of the mother-country. Their officiating priests were to be chosen from the metropolis.¹ In the distribution of victims, if citizens of the metropolis happened to be present it was customary to accord them the first place, as was also the case in the public games, assemblies, and solemnities.² With regard to the alienation of the Corcyraeans from their mother-city, Corinth, Thucydides states that in their common festivals they did not permit the Corinthians to enjoy the customary privileges of founders,—*οὔτε γὰρ ἐν πανηγύρεσι ταῖς κοιναῖς δίδόντες γέρα τὰ νομιζόμενα*,³ and at their sacrifices denied to a Corinthian the right of receiving first the lock of hair cut from the victim's head,—an honour usually granted by colonies to a representative of the mother-country. Further, the colonies were expected to decorate the temples of the metropolis with gifts, with a portion of the booty captured from the enemy, with trophies, statues, and other ornaments.⁴ The various religious ties continued to be very powerful till the fifth century B.C.; and so, in some instances, on the other hand, the political relations were to a large extent neglected, as in the case of Corinth;—thus Potidaea, originally a Corinthian colony, was in 432 B.C. the tributary ally of Athens.⁵

Non-religious
rights and
duties.

As to non-religious rights and obligations, these relationships do not appear to have been for any length of time clearly defined, or firmly established; and, for the most part, they were dependent more on fact and custom than on deliberate provisions of positive law. Generally speaking, however, in return for the protection and assistance in war afforded to the colonies by the metropolis, it was incumbent upon them, by virtue of a reciprocal obligation, to send such help in her own

¹ Schol. ad Thuc. i. 25.

² Thuc. i. 25.

³ *Ibid.*

⁴ Liv. xli. 20; Plin. xxxvi. 6; Sueton. *Aug.* 69; Pausan. i. 13.

⁵ Thuc. i. 56.

wars as was proportionate to their wealth and capacity.¹ Thus Potidaea, a town in Macedonia, being a colony of Corinth, the Potidaeans assisted the Corinthians at Plataea.² To adduce an example of a different kind from the Homeric narrative—which indicates at least the inveterate recognition of the principle—it may be recollected that Ajax, the son of Telamon, the sovereign of Salamis (which had been colonized by the Aeacidae of Aegina) assisted the Greeks with twelve ships in the Trojan war.³ Again, the inhabitants of Leontini (founded by the Chalcidians of Naxos) aided the Naxians when besieged by the Messenians, 425 B.C.⁴ The Lacedaemonians came to the assistance of the Dorians, 457 B.C., when the latter were assailed by the Phocians.⁵ In 426 B.C. the Lacedaemonians founded the colony of Heraclea, in order to help their mother-state, Doris.⁶ Similar obligations were laid on the sister-colonies to help each other.⁷ It was esteemed an act of gross impiety for colonists to bear arms against their founders, or for the founders to bear arms against their colonies.⁸ In a projected expedition of Cambyses against Carthage, the Phoenicians refused to obey his command, on the ground that they were bound by solemn oaths, and that it would be an impious act if they engaged in hostilities against their own descendants.⁹ Again, Herodotus states that Themistocles, wishing to gain over the Ionians, caused inscriptions to be engraved on stones which might arrest their attention, and remind them of their natural duty. The first portion was to this effect: ‘Men of Ionia, you do wrong in fighting against your fathers, and helping to enslave Greece; rather, therefore, come over to us; or, if you

An act of impiety to take up arms.

¹ Cf. Thuc. i. 107; iii. 34.

² Herodot. ix. 28.

³ *Iliad*, ii. 557.

⁴ Thuc. iv. 25.

⁵ Thuc. i. 107.

⁶ Thuc. iii. 92.

⁷ Thuc. vii. 56.

⁸ Herodot. iii. 19; viii. 22; cf. Thuc. v. 106.

⁹ Herodot. iii. 19: Φοίνικες δὲ οὐκ ἔφασαν ποιήσειν ταῦτα· ὀρκίοισί τε γὰρ μέγαλοισι ἐνδεδέσθαι, καὶ οὐκ ἂν ποίειν ὅσια ἐπὶ τοὺς παῖδας τοὺς ἐωπῶν στρατευόμενοι.

cannot do that, withdraw your forces from the contest, and entreat the Carians to do likewise.'¹ The Corinthian ambassadors, who were sent to Athens to oppose the request for assistance made by their colonists, the Corcyraeans, 433 B.C., admitted that it was undoubtedly an extraordinary proceeding for Corinth to make war on Corcyra; but they defended the act on the ground of the unparalleled injury inflicted upon them by the latter.²

The metropolis
not to interfere
in political
affairs of its
colonies.

The metropolis was not entitled to interfere in the political affairs of its colonies; an undue encroachment in this respect was usually held to be a dissolution *ipso facto* of the existing bonds. Thus, when the Corinthian and Corcyraean embassies met in Athens (434-433 B.C.)—the latter to solicit an alliance, the former to prevent it—the Corcyraean representatives, in the course of their address to the Athenians, said: "If they say we are their colony, and that therefore you have no right to receive us, they should be made to understand that all colonies honour their mother-city when she treats them well, but are estranged from her by injustice. For colonists are not meant to be the servants but the equals of those who remain at home. And the injustice of their conduct to us is manifest; for we proposed an arbitration in the matter of Epidamnus, but they insisted on prosecuting their quarrel by arms, and would not hear of a legal trial."³ A

¹viii. 22: "Ἄνδρες Ἴωνες, οὐ ποιεῖτε δίκαια ἐπὶ τοὺς πατέρας στρατευόμενοι, καὶ τὴν Ἑλλάδα καταδουλούμενοι. ἀλλὰ μάλιστα μὲν πρὸς ἡμέων γίνεσθε· εἰ δὲ ὑμῖν ἐστὶ τοῦτο μὴ δυνατὸν ποιῆσαι, ὑμέες δὲ ἔτι καὶ νῦν ἐκ τοῦ μέσου ἡμῖν ἔξεσθε καὶ αὐτοῖ, καὶ τῶν Καρῶν δέεσθε τὰ αὐτὰ ὑμῖν ποίειν.

²Thuc. i. 38: καὶ δῆλον ὅτι εἰ τοῖς πλέοσιν ἀρέσκοντές ἐσμεν, τοῖσδ' ἂν μόνοις οὐκ ὀρθῶς ἀπαρέσκοιμεν, οὐδ' ἐπιστρατεύομεν ἐκπρεπῶς, μὴ καὶ διαφερόντως τι ἀδικούμενοι.—Cf. Herodot. iii. 49.

³Thuc. i. 34: ἦν δὲ λέγων ὡς οὐ δίκαιον τοὺς σφετέρους ἀποίκους ὑμᾶς δέχεσθαι, μαθέτωσαν ὡς πᾶσα ἀποικία εἶ μὲν πάσχωσα τιμῇ τὴν μητρόπολιν, ἀδικουμένη δὲ ἀλλοτριούται· οὐ γὰρ ἐπὶ τῷ δοῦλοι ἀλλ' ἐπὶ τῷ ὀμοιοῖ τοῖς λειπομένοις εἶναι ἐκτέμπονται. ὡς δὲ ἠδίκουν, σαφές ἐστι· προκληθέντες γὰρ περὶ Ἐπιδάμνου ἐς κρίσιν, πολέμῳ μᾶλλον ἢ τῷ ἴσῳ ἐβουλήθησαν τὰ ἐγκλήματα μετελθεῖν.

colony seeking to establish a settlement of its own was obliged to choose a leader (*οἰκιστής*) from its parent State.¹ Thus the colony of Epidamnus was founded by Corcyraeans, under the leadership of a Corinthian, who was invited, according to ancient custom, from the metropolis,—... *οἰκιστῆς* ... *Κορίνθιος* ... *κατὰ δὴ τὸν παλαιὸν νόμον ἐκ τῆς μητροπόλεως κατακληθείς*.² The metropolis, again, frequently sent governors to the colonies,³ and sometimes also generals. In reference to the failure of the new Spartan colony, Heraclea, Thucydides says that one of the main causes of the ruin and depopulation of the place was the conduct of the governors, *ἄρχοντες*, sent out from Lacedaemon, who frightened the people away by their severe and often unjust administration.⁴ Finally, the mother-states enjoyed hospitality in the colonies, could contract valid marriages with the inhabitants, and own land there; and, in certain cases, they also possessed special privileges.

Certain rights
of the
mother-state.

Thus it is seen that there existed a virtual alliance between the mother-country and her colonies,—an alliance, moreover, based on considerations of sentiment and filial piety, reinforced by the religious sanction, rather than resting on any express compact. And such a union was by no means of a precarious nature. In fact, on several occasions it was found strong enough to supersede treaties concluded with foreign communities, and to impel the colonists to abandon their allies in favour of their own metropolis. An example of this is the exhortation of Themistocles to the Ionians, as referred to above. And Thucydides recounting the various causes of the quarrel between the Athenians and the Peloponnesians, mentions that Potidaea, which was originally a Corinthian colony, but in 432 B.C. the tributary and ally of Athens, revolted from the latter.⁵ Similarly, the Mytileneans of Lesbos repudiated their

Relationships
of a virtual
alliance.

¹ Thuc. i. 24; cf. vi. 3, 4, in reference to numerous Hellenic colonies.

² Thuc. i. 24.

³ Thuc. iii. 93.

⁴ *Ibid.*

⁵ Thuc. i. 56; i. 60.

alliance with Athens in order to join the Peloponnesian league; and the envoys from Mytilene, at the council of the Peloponnesian allies held at Olympia, 428 B.C., drew a distinction between their former relationship to Athens and the more fundamental one of kinship.¹ As a French writer says: “. . . Il y avoit entre les métropoles et les villes qu’elles avoient fondées une alliance naturelle qui subsistoit réellement sans avoir besoin d’être marquée par aucun traité positif. Cette union étoit si forte qu’elle passoit par dessus tous les traités faits avec des étrangers.”²

Roman
colonies.

The question of Roman colonies³ need scarcely occupy our attention here, as their position with regard to Rome was, from an interstatal point of view, different from that of the Greek colonies with respect to their metropolis.

There was a certain form of colonization amongst the most ancient communities in Italy. From time to time they sent out their superfluous male population to seek new homes.⁴ Colonies were established by Rome for the purpose of holding in check a conquered nation, and for preventing hostile incursions, as, for example, in the case of the colonies of Narnia,⁵ Minturnae, and Sinuessa,⁶ Cremona, and Placentia.⁷ Hence, we find Cicero designating them ‘propugnacula imperii,’⁸ the bulwarks of empire. Other reasons for Roman colonization were the desire to increase the population,

¹ Thuc. iii. 9.

² Bougainville, *op. cit.* p. 73.

³ Cf. J. N. Madvig, *De coloniarum pop. Rom. jure et condicione* (1832); Dumont, *Des colonies romaines* (in *Annales des Universités de Belgique*, Bruxelles, 1843, pp. 557 *seq.*); N. D. Fustel de Coulanges, *Le colonat romain* (in *Recherches sur quelques problèmes d’histoire*, Paris, 1885, pp. 1-186); Smith’s *Dict. of Antiq. s.v. Colonia*; Dar.-Sag. *s.v. Colonia*; Pauly’s *Real-Encyclop. s.v. Coloniae*.

⁴ Dion. Hal. i. 16.

⁵ Liv. x. 10.

⁶ Liv. x. 21.

⁷ Liv. xxvii. 46.

⁸ Cic. *De leg. agr.* ii. 27, 73.—Cf. his similar description (*Pro Font. i. 13*) of Narbo Martius, situated in the province of Gallia: “Colonia nostrorum civium, specula populi Romani et propugnaculum.”

and so to augment the power of Rome ;¹ to provide a means for deporting dangerous and turbulent individuals ; and, in the case of the *coloniae militares*, to procure some provision for veteran soldiers.²

The Roman colonists usually received a third of the conquered territory,³—the original inhabitants retaining the rest,—and the colony proper was held to be constituted by the new settlers alone. The conquered people did not receive complete citizenship, but were debarred from the political privileges of the *ius suffragii*.

As in the case of Greece, when a law was passed for establishing colonies a number of persons—commonly three⁴—were selected to take charge of the necessary proceedings. The method of apportioning the land, and the fixing of its amount, were prescribed by a legislative act.

There were different kinds of colonies, such as *coloniae civium Romanorum*, *coloniae Latinae*, and *coloniae Italici iuris*. Different kinds of Roman colonies.

The *coloniae civium Romanorum* included those which were founded exclusively by Roman immigrants, who, no doubt, retained their full rights of citizenship ; whilst the conquered inhabitants were granted the *civitas sine suffragio*.

The *coloniae Latinae*, of which there were three kinds, were founded after Rome acquired supremacy in Italy, on the decisive defeat of the Latins, 338 B.C., and the Hernicans, 306 B.C., and comprised Latins as well as Roman citizens. Most of these were allowed to remain independent communities, enjoying their own ancestral laws and institutions ; they could adopt, when they chose, the principles of Roman jurisprudence. The Roman citizens who settled there lost their *civitas*, for which *Latinitas* was substituted, and became *peregrini*,⁵

¹ Liv. xxvii. 9. ² Liv. xxxi. 4.—Cf. Vell. Pat. i. 15.

³ Dion. Hal. ii. 35, 50, 53 ; Liv. x. 1.

⁴ Cf. Liv. xxxvii. 46 : “ triumviri ad colonos deducendos.”—Cf. vi. 21.

⁵ See vol. i. pp. 240 *seq.*

though *commercium*, and probably *connubium*, were extended to them.

The *coloniae Italici iuris* were not colonies in the strict sense, but were rather such provincial cities as received, by way of a special concession, the *ius italicum*.¹ This conferred on the community *commercium*, including the various incidental rights; and also immunity from taxation.

As to the particular duties of the colonies to Rome, there is no text on the subject in the various codes of jurisprudence.

¹ See vol. i. p. 234.

CHAPTER XX

INTERNATIONAL ARBITRATION IN GREECE

IN most of the States of antiquity, with their conception of a strictly exclusive citizenship, their assumption of interminable antagonism towards other communities, and their conviction of superiority in regard to alien peoples, war was a much more frequent mode of settling disputes and satisfying claims than arbitration. International arbitration, in the strict sense, presupposes the existence of independent and autonomous States recognized as resting on a basis of juridical equality. But this principle, especially so in the case of oriental nations, was not firmly established, owing to the ineradicable notions of alienage, mutual hostility, religious incompatibility, and the natural tendency to resort to arms for the purpose of exacting justice. There were, of course, occasional relaxations in respect of such recourse to forcible measures. For deciding disputes, practices other than war were from time to time adopted, amongst which were mediation and arbitration. But, on the whole, references to arbitration were few. We do not find any general system, any regularized procedure, any accepted body of rules.

Two or three examples are commonly cited by modern enthusiastic advocates of arbitration, as indicating that this peaceful method of terminating controversies was practised in the East.¹ It is related by Herodotus that

¹ Cf. L. Kamarowsky, *Le tribunal international* (trans. from the Russian by Serge de Westman, Paris, 1887), p. 112.

during the lifetime of Darius, a dispute arose between his sons Ariamenes and Xerxes as to the succession, and that Darius settled it in favour of the latter. But after the death of the king, the conflict between the claimants arose again on account of the different views of the people, and owing to the alleged absence of positiveness and finality in the previous settlement. Hence it was agreed to submit their claims to their uncle Artaphernes, who pronounced in favour of Xerxes.¹ This is obviously not an instance of international arbitration, but merely a family arrangement.

Again, in the case of a dispute between Cyrus and the king of Assyria, an Indian sovereign is reported to have been called in as arbitrator.

Further, it appears that after the defeat of the Ionians, Artaphernes, the satrap of Sardis, summoned the deputies of the towns, and induced them to enter into a convention engaging to settle any conflicts that might arise amongst themselves by the peaceful means of an arbitral tribunal rather than by violent measures.²

In Greece.

When we come to Greece,³ we find that the conception of arbitration was much more developed than it was elsewhere, and that arbitral procedure was there more extensively applied than it had been heretofore or in any other contemporary State. Decrees were often passed in honour of arbitration. Indeed, it may be

¹ Cf. Barbeyrac, *op. cit.* i. no. 107, p. 86, who gives the text of Justin, ii. 10. 9: "Hoc certamen ad patrum suum Artaphernem, veluti ad domesticum iudicem deferunt; qui domi cognita causa, Xerxem praeposuit."

² Herodot. vi. 42: τούτου τοῦ ἔτους Ἀρταφέρνης ὁ Σαρδίων ὑπαρχος, μεταπεψάμενος ἀγγέλους ἐκ τῶν πολιῶν, συνθήκας σφίσι αὐτοῖσι τοὺς Ἴωνας ἠνάγκασε ποιεῖσθαι, ἵνα δωσίδικοι εἶεν, καὶ μὴ ἀλλήλους φέροίεν τε καὶ ἄγοιεν.

³ On arbitration in Greece, see M. H. E. Meier, *Die Privatschiedsrichter und die öffentlichen Diäteten Athens, so wie die Austrägalgerichte in den griechischen Staaten des Alterthums* (Halle, 1846); E. Sonne, *De arbitris externis quos Graeci adhibuerunt ad lites intestinas et peregrinas componendas quaestiones epigraphicae* (Göttingen, 1888); V. Bérard, *De arbitrio inter liberas Graecorum civitates* (Paris, 1894); B. Hubert, *De arbitris atticis et privatis et publicis* (Leipzig, 1885).

reasonably claimed that international arbitration, in the strict sense of the term—that is, international, not merely in the ethnographic sense, but with a political and juridical significance—owes its rise and evolution to the Greeks, with their system of independent sovereign city-states. As a modern Italian writer says, international arbitration is really a peculiar manifestation of the political life of the Hellenic communities,—“l'arbitrato internazionale è, infatti, una manifestazione tutta particolare della vita politica dei Greci.”¹

Already in the Greek mythological and heroic ages we find examples of private and interstatal arbitration, and even various cases arising amongst the gods themselves.² Thus, there were frequent disputes between the gods respecting the possession of a country or portion of territory, and as to the predominance of this or that worship therein; and such controversies were often submitted to and settled by chosen gods or heroes. Pausanias relates, for instance, that there was a difference between Poseidon (the Latin Neptune, god of the sea) and Helios (the sun-god) with regard to the possession of the Corinthian territory, and that the hundred-handed giant, Briareus (known also as Aegaeon) acted as mediator, διαλλακτής, awarding to Poseidon the isthmus and its neighbourhood, and to Helios the height which dominates the city. So that from that time, the Corinthians considered that the isthmus belonged to Poseidon.³

Arbitration in the Greek heroic age.

The same writer states that there was a legend to the effect that Inachus (the mythical king of Argos) arbitrated in the dispute between Poseidon and Hera

¹ E. de Ruggiero, *L'arbitrato pubblico in relazione col privato presso i Romani*.—*Studio di epigrafia giuridica* (Roma, 1893), p. 52.

² Cf. Meier, *op. cit.* p. 8, note 1.

³ Pausan ii. 1. 6: λέγουσι δὲ καὶ οἱ Κορίνθιοι Ποσειδῶνα ἐλθεῖν Ἡλίῳ περὶ τῆς γῆς ἐς ἀμφισβήτησιν, Βριάρεων δὲ διαλλακτὴν γενέσθαι σφίσι, Ἴσθμὸν μὲν καὶ ὄσα ταύτῃ δικάσαντα εἶναι Ποσειδῶνος, τὴν δὲ ἄκραν Ἡλίῳ δόντα τὴν ὑπὲρ τῆς πόλεως. ἀπὸ μὲν τούτου λέγουσιν εἶναι τὸν Ἴσθμὸν Ποσειδῶνος.

(the Latin Juno, queen of the gods) as to Argolis, and that he was assisted by Cephisus and Asterion (two river-gods). Poseidon, however, did not acquiesce in their decision, which was delivered in favour of Hera, and in retaliation caused their water to disappear.¹

Again, in the case of the conflicting claims of Athena (the tutelary goddess of Athens, called Minerva by the Romans) and Poseidon as to the possession of Aegina, Zeus was the arbitrator, and he decided that they should hold it in common.²

We read also of other examples of arbitration, such as that between Adrastus (king of Argos) and Amphiaraus (a famous Greek seer) in reference to the Argive kingdom, when Eriphyle, the sister of Adrastus, and the wife of Amphiaraus, decided in favour of her brother ;³ and that between the sons of Erechtheus (a fabled king of Athens) as to sovereignty in Attica, when Xuthus (the mythical king of Peloponnesus) pronounced in favour of Cecrops, the eldest : the other sons, however, refused to accept the award, and drove the successful claimant from the country.⁴

It must be here emphasized that the above examples, mythical or heroic, are referred to, not with a view to insist on literal facts and details, but merely to point to the existence of the conception of arbitration, other than private, in the earliest epochs ; such instances show, at all events, that in the traditions current amongst the Greeks of the historical period, arbitral

¹ Pausan. ii. 15. 5 : τούτων δὲ Ποσειδῶνι καὶ Ἡρᾷ δικάσαι περὶ τῆς χώρας, σὺν δὲ αὐτῷ Κηφισὸν τε καὶ Ἀστερίωνα· κρινάντων δὲ Ἡρας εἶναι τὴν γῆν, οὕτω σφίσιν ἀφανίσαι τὸ ὕδωρ Ποσειδῶνα.

² *Ibid.* ii. 30. 6.

³ Diodor. iv. 65 : καθ' ὃν δὴ χρόνον Ἀμφιαράου πρὸς Ἀδραστον στασιάζοντος περὶ τῆς βασιλείας, ὁμολογίας θέσθαι πρὸς ἀλλήλους, καθ' ἃς ἐπέτρεπον κρίναι περὶ τῶν ἀμφισβητουμένων Ἐριφύλην, γυναιῖκα μὲν οὔσαν Ἀμφιαράου, ἀδελφὴν δὲ Ἀδράστου.

⁴ Pausan. vii. 1. 2 : ἀποθανόντος δὲ Ἐρεχθέως τοῖς παισὶν αὐτοῦ δικαστῆς Ἰοῦθος ἐγένετο ὑπὲρ τῆς ἀρχῆς, καὶ ἔγνω γὰρ τὸν πρεσβύτατον Κέκροπα βασιλέα εἶναι, οἱ λοιποὶ τοῦ Ἐρεχθέως παῖδες ἐξελαύνουσιν ἐκ τῆς χώρας αὐτόν.

procedure was clearly recognized as having already been a long-established institution in their country.

Coming to more historical times in Greece, we find a large variety of disputes submitted to arbitrators, and a frequent adoption of the arbitral procedure. These comprised matters of religion, questions relating to the occupation and possession of territory, especially in respect of the numerous isles scattered in the Grecian seas, disputes arising out of the delimitation of boundaries, commercial differences, violation of port privileges, rupture of federal pacts and other alliances, and, in general, offences against the sovereignty or autonomy of the contending parties.

In comparison with other ancient nations, the Greeks ever manifested a ready disposition to submit their disputes to arbitral tribunals, and in many other respects showed unmistakably general pacific tendencies. Thus in 432 B.C., at the assembly of the Peloponnesian allies at Sparta, many complaints were brought against Athens by the various confederates, and the majority of the Lacedaemonians, at their subsequent conference in private, thought there was a clear case against the accused city, and were anxious for war. But their king, Archidamus, who was esteemed as an able and prudent man,—*ἀνὴρ καὶ ξυνετὸς δοκῶν εἶναι καὶ σώφρων*, as Thucydides says¹—observed in the course of his speech: “At my age, Lacedaemonians, I have had experience of many wars, and I see several of you who are as old as I am, and who will not, as men too often do, desire war because they have never known it, or in the belief that it is either a good or a safe thing.”² Then condemning precipitation, and counselling a temporizing policy, he suggested a reference to arbitrators of the complaint of the Corinthians, of the

¹i. 79.

²Thuc. i. 80: καὶ αὐτὸς πολλῶν ἤδη πολέμων ἔμπειρός εἰμι, ὃ Λακεδαιμόνιοι, καὶ ὑμῶν τοὺς ἐν τῇ αὐτῇ ἡλικίᾳ ὄρω, ὥστε μήτε ἀπειρία ἐπιθυμησαί τινα τοῦ ἔργου, ὅπερ ἂν οἱ πολλοὶ πάθοιεν, μήτε ἀγαθὸν καὶ ἀσφαλὲς νομίσαντα.

question of the Athenian blockade of Potidaea, and of the grievances of the other allies. "Send to the Athenians," he urged them, "and remonstrate with them, both about Potidaea, and about the other wrongs of which your allies complain. They say they are willing to have the matter tried; and against one who offers to submit to justice, you must not proceed as against a criminal until his cause has been heard."¹ This was a reference to the rejoinder of Athenian ambassadors, who happened to be present in Sparta on other affairs, defending their country against the numerous accusations, exhorting the assembly not to make war in violation of their oaths, and suggesting that their differences should be determined by arbitration, according to the previous treaty,—σπονδὰς μὴ λύνειν μηδὲ παραβαίνειν τοὺς ὄρκους, τὰ δὲ διάφορα δίκη λύεσθαι κατὰ τὴν ξυνήκην.²

In 420 B.C., in the negotiations between Argos and Lacedaemon respecting the conclusion of peace, the Argives demanded that the old difference about the border-land of Cynuria, a district occupied by the Lacedaemonians, should be submitted to the arbitration of some State or person.³

Aeschines, in a eulogy of arbitral procedure for the settling of conflicts, praises Philip of Macedon for offering to submit his quarrels with Athens to the judgment of an impartial State.⁴ Demosthenes, however, having regard especially to Philip's palpably unjustifiable claim as to Halonnesus, characterized his offer as an insult to the Athenians.⁵

¹ Thuc. i. 85: καὶ πρὸς τοὺς Ἀθηναίους πέμπετε μὲν περὶ τῆς Ποτιδαίας, πέμπετε δὲ περὶ ὧν οἱ ξύμμαχοί φασιν ἀδικεῖσθαι, ἄλλως τε καὶ ἐτοιμῶν ὄντων αὐτῶν δίκας δοῦναι. ἐπὶ δὲ τὸν διδόντα οὐ πρότερον νόμιμον ὡς ἐπ' ἀδικοῦντα ἰέναι.

² *Ibid.* i. 78.

³ *Ibid.* v. 41: καὶ τὸ μὲν πρῶτον οἱ Ἀργεῖοι ἠξίουν δίκης ἐπιτροπῆν σφίσι γενέσθαι ἢ ἐς πόλιν τινὰ ἢ ἰδιώτην, περὶ τῆς Κυνοσουρίας γῆς, ἧς αἰεὶ πέρι διαφέρονται μεθορίας οὐσης. . . .

⁴ *c. Ctesiph.*, *passim.*

⁵ *De Halon.*

The oracle at Delphi was often consulted in the case of interstatal disputes, and its arbitral decisions were almost invariably accepted. Thus the Corcyraeans opposed the claim of Corinth to Epidamnus, 435 B.C., and expressed their readiness to submit the dispute either to the arbitration of any Peloponnesian State mutually agreed upon, or to leave the decision to the Delphian oracle,—*ἤθελον δὲ καὶ τῷ ἐν Δελφοῖς μαντείῳ ἐπιτρέψαι*.¹ On account of its important functions as a mediator between cities, it is termed by Cicero the ‘*oraculum orbis*.’² Eastern potentates also resorted to it from time to time; and, on the whole, its intervention, even in their case, made for peace. Occasionally, difficult questions submitted to it were more or less evaded; as, for example, in the case of the Cyrenaeans (c. 550 B.C.), inquiring of the god what form of government would best secure them prosperity, when it merely declared that an arbitrator should be chosen from amongst the Mantinaeans,—whereupon Demonax, a person of high repute, was appointed.³

Influence of
the Delphic
oracle.

The judgments pronounced by the Amphictyonic Council on differences arising amongst the confederates under its jurisdiction may likewise be, in a sense, regarded as arbitral awards. Its general functions as a judicial tribunal have already been referred to.⁴ The majority of the cases submitted to the council in its capacity as arbitrator were concerned with intestine disputes; as, for example, that between Athens and Delos (c. 345 B.C.) as to the temple of Apollo, which was claimed by both contending parties. It appears that Philip of Macedon endeavoured to influence the council, which probably decided in the end in favour of the Athenians.⁵

Of the
Amphictyonic
Council.

¹ Thuc. i. 28.

² Cf. *De Divin.* i. 19, etc.

³ Herodot. iv. 161: ἡ δὲ Πυθίη ἐκέλευε ἐκ Μαντινέης τῆς Ἀρκάδων καταρτιστῆρα ἀγαγέσθαι.

⁴ Cf. *supra*, p. 8.

⁵ Cf. Bürgel, *Die Pylaeisch-Delphische Amphiktyonie* (1877), p. 204: “Dass die Athener aber überhaupt sich herbeilassen, ihre Rechte vor

Other kinds of arbitrators.

Apart from the Delphic oracle and the Amphictyonic Council, a friendly city, ἔκκλητος πόλις, was not infrequently chosen as arbitrator; and the judges it nominated bore different names, such as δικαστής,¹ διαλυτής, κριτής, and the like. It has already been pointed out, in reference to the determination of inter-statal conflicts, that the πόλις ἔκκλητος was not, properly speaking, a court of appeal.² It was really a third city mutually chosen by the contesting parties either when some particular dispute had actually arisen, or in previous conventions between them, stipulating the pacific regulation of differences in general, or of a certain class, as the case may be, by arbitral procedure. On the other hand, in the case of confederacies (as has already been observed), the State exercising the hegemony usually obtained the right—by specific treaties with the other constituent cities, or by resolution of the federal assembly—to act as the πόλις ἔκκλητος in certain serious matters affecting the constitution or the safety of the league. This view is contrary to that of the majority of writers, who have been misled by the etymological significance of the Greek expression, and is in substantial agreement with that of M. Lécivain, whose definition is as follows: “La πόλις ἔκκλητος . . . est ou bien la ville choisie ou imposée comme arbitre soit pour un cas particulier, soit à l’avance, d’après un traité, entre villes différentes, ou entre ville et habitants d’une autre ville, ou entre partis et habitants d’une même ville; ou bien, dans les confédérations, la ville maîtresse qui s’est réservé le jugement de certaines causes, des δίκαι ἔκκλητοι.”³ Sometimes, also, certain individuals were appointed to officiate, as, for example, a famous philosopher, or

der Amphiktyonie zu vertheidigen, scheint gleichwohl Philipp’s Einfluss zugeschrieben werden zu müssen.” Cf. *ibid.* p. 267; and see *supra*, p. 11, Grote’s remark respecting the influence brought to bear on the Council.

¹ Cf. Herodot. i. 96.

² See vol. i. p. 203.

³ Daremberg-Saglio, *s.v.* *Ephesis*.

poet, as Simonides, in the dispute between Hiero of Syracuse and Thero of Agrigentum;¹ a distinguished athlete or victor at the great games, as Pantarces between the Eleans and the Achaeans,² and Pyttalus between the Eleans and the Arcadians;³ and so on with other classes of distinguished citizens. Such individual arbitrators were commonly designated *διαιτηταί*; ⁴ and the appellations *διαλλακτής*,⁵ *διαλλακτήρ*,⁶ *δικαιοδότης*,⁷ *καταρτιστήρ*,⁸ are also used. From time to time a commission of several members was appointed by the *πόλις ἑκκλητος* to arbitrate on serious interstatal conflicts, in which case the court was usually designated a *δικαστήριον*, whose members were *δικασταί*, or a *κριτήριον*, whose members were called *κριταί*. Not infrequently was there a 'mixed commission,' and the arbitral tribunal it constituted was generally described as a *κοινὸν δικαστήριον*.⁹

On some occasions, an individual or a city proposed as arbitrator by one party was rejected by the other on the alleged ground of partiality, incompetence, or insignificance of the nominee. Thus, in the case of a dispute between Athens and Sparta, Athens suggested a reference to Megara; but, according to the testimony

¹ Schol. ad Pindar, *Olymp.* ii. 29. ² Pausan. vi. 15. 2.

³ *Ibid.* vi. 16. 8.

⁴ Herodot. v. 95, quoted *infra*, p. 139 n. 2.

⁵ Pausan. ii. 1. 6, quoted *supra*, p. 129 n. 3.

⁶ Aeschyl. *Theb.* 908.

⁷ Strabo, xvii. 1. 12.

⁸ Herodot. iv. 161; v. 28.

⁹ See vol. i. p. 207.—Thus Plato, in a somewhat different connection, uses some of these names to describe certain courts. Dealing with the question of the judicature, and the institution of different tribunals, he makes the Athenian explain that it would be well for disputants to ask a council of neighbours, fully cognizant of the circumstances, to settle their conflict; if they failed, then they should appeal to a higher court (*κριτήριον*, or *δικαστήριον*) for private causes, or for public causes, as the case might be; and if their controversy was not even then adjusted to their satisfaction, they were to appeal finally to a supreme tribunal (*κοινὸν δικαστήριον*) consisting of a number of judges chosen by mutual agreement from amongst the various magistracies (*Laws*, vi. 767).

of Plutarch, the Spartan king Agesipolis I. replied that it would be an insult to imagine that Megara understood justice better than some of the more powerful Hellenic States.¹

Compromise
clauses.

Most of the conflicts and controversies arose between allied States, or between countries that had otherwise concluded treaties. In such cases recourse to arbitration was facilitated, if not positively exacted, by 'compromise clauses' which were frequently inserted in the treaties in question. Thus in the second treaty of alliance between Sparta and Argos, 418 B.C., it was expressly stipulated in the very first clause that any differences that might arise subsequent to the ratification should be referred to arbitration on fair and equal terms, according to their ancestral customs,—*ἐπὶ τοῖς ἴσοις καὶ ὁμοίοις δίκαις διδόντας κατὰ πάτρια*.² And again in the fifth clause: "If any of the States, either within or without Peloponnesus, have a dispute about a frontier, or any other matter, the difference shall be duly settled. But should a quarrel break out between two of the allied States, they shall appeal to some State which both the cities deem to be impartial."³ Similarly, in the treaty between Hierapytna and Priansos, which has already been referred to,⁴ not only was there a provision for the establishment of a common tribunal (*δικαστήριον κοινόν*), but it was also stipulated that certain kinds of controversies should be submitted to the judgment of a third city, *πόλις ἑκκλητος*, if not satisfactorily adjusted by the said tribunal. Hence arbitral

¹ Plut. *Apophth.* 215 c: Ἀγησίπολις ὁ Πανσανίου, Ἀθηναίων πρὸς αὐτὸν περὶ ὧν εἶχον πρὸς ἀλλήλους ἑγκλημάτων, τὴν τῶν Μεγαρέων πόλιν ἑκκλητον λαμβανόντων, αἰσχρὸν, εἶφη, ὧ Ἀθηναῖοι, τοὺς ἀφηγησαμένους τῶν Ἑλλήνων ἦσσαν εἰδέναι Μεγαρέων τὸ δίκαιον.

² Thuc. v. 79.—On this treaty, see *supra*, pp. 61-62.

³ *Ibid.* v. 79: αἰ δέ τινα τῶν πολιῶν ἢ ἀμφίλογα, ἢ τῶν ἐντὸς ἢ τῶν ἐκτὸς Πελοποννήσου, αἴτε περὶ ὄρων αἴτε περὶ ἄλλων τινὸς, διακριθῆμεν. αἰ δέ τις τῶν ἐξυμμάχων πόλις πόλει ἐρίζοι, ἐς πόλιν ἐλθεῖν, ἂν τινα ἴσαν ἀμφοῖν ταῖς πολιέσι δοκοίη.

⁴ Vol. i. p. 207; *supra*, pp. 63 *seq.*—See also vol. i. p. 410.

causes were generally designated *δίκαι ἔκκλητοι*, and sometimes also *δίκαι ἐφέσιμοι*,—the latter term implying, in matters of private law, the right of appeal, *ἐφέσιμος*, to another court,¹ and, in international relationships, a reference, optional or obligatory, to the arbitration of a third city; as M. Lécrivain points out, “. . . dans le droit international de la Grèce, l’*ἔφεσις* n’est pas l’appel, mais le renvoi, soit facultatif, soit obligatoire, devant les tribunaux d’une autre ville.”²

In this connection, reference may be made to an interesting inscription discovered in 1846 on the Acropolis at Athens. From this it appears that a convention (*σύμβολον*) had been established between Athens and the Boeotians; and that in accordance with the provisions thereof the town of Lamia was chosen to arbitrate between them. The Lamians accepted the submission, and signalized their acceptance by offering up sacrifices and celebrating their mysteries.³

As to the details of the procedure, there is very little reliable information. But what took place was probably this. The arbitrator (or arbitrators of varying number) having been nominated, and mutually accepted by the contending parties, was made acquainted with the question at issue and the terms of the reference. He then determined when and where he would deliver his verdict; in such conflicts as boundary disputes he, of course, proceeded to the territory in question. In some cases, the place where the sentence was to be pronounced, as well as the particular arbitral tribunal, was agreed upon in previously established conventions, The procedure.

¹ Pollux, viii. 63: *ἐφέσιμος δὲ ἄνομάζετο ἢ δίκη· αἴται δὲ καὶ ἔκκλητοι δίκαι ἔκαλοῦντο.*

² Daremberg-Saglio, *s.v.* *Ephesis*.

³ Rangabé, t. ii. no. 451, ll. 9 seq.:

[ἔπε-

ιδῆ τοῦ δήμου τοῦ Ἀθηναίων καὶ [τοῦ κοινο-
ῦ τοῦ Βοιωτῶν σύμβολον ποιησα[μένων πρὸς
ἄλλήλους, καὶ ἐλομένων ἔκκλη[τον τὴν Λα-
μίων πόλιν, ἀνεδέξατο καθ’ ἰερ[ῶν καὶ μυσ-
τηρίων, καὶ νῦν οἱ ἀποσταλέντ[ες. . .

which, as a rule, also stipulated a definite period within which the award was to be made. The litigant States despatched representatives to expound and plead their respective causes. Such delegates (called *σύνδικοι*,¹ and sometimes *συνήγοροι*²) acted, on the one hand, in a diplomatic capacity, and, on the other, as advocates appealing to the principles of equity, or to such appropriate provisions of law as existed, in support of their claims. After taking a solemn oath that he would faithfully and impartially perform his function, the arbitrator investigated the affair, heard the claims of both sides, and received evidence. The award, *κρίσις*,³ (or *ἐπιτροπή*,⁴ a word also used to indicate the reference; the term *ἀπόφασις* is also employed in the sense of 'declaration'), which the parties had engaged on oath to abide by, and the observance of which was sometimes further guaranteed by the furnishing of definite security or the imposition of a fine,⁵ was then given, and a carefully written record made (often engraved on marble steles), of which a copy was deposited in some temple or public place.

Examples of
arbitration.

By way of enlarging and illustrating the above considerations, it will be well to mention some of the leading arbitral cases, which will further exemplify the extent and applications of this peaceful mode of settling international and intermunicipal disputes amongst the ancient Greeks.

Between
Athens and
Megara.

In the time of Solon there was a case of arbitration between Athens and Megara, as to the possession of

¹ Demosth. *De corona*, 134; *Corp. inscrip. Graec.* 2353.

² Newton, *Collection of ancient Greek inscriptions*, pt. ii. no. 299, p. 86, l. 19; *Bull. de corr. hellén.* vol. x. p. 241. See *infra*, p. 149.

³ Cf. Pausan. vii. 11. 4-5, quoted *infra*, p. 146 n. 2.

⁴ Cf. Thuc. v. 31, quoted *infra*, p. 144 n. 1; and Thuc. v. 41, quoted *supra*, p. 132 n. 3.

⁵ *Corp. inscrip. Graec.* 2265; *Bull. de corr. hellén.* vol. iii. p. 292, for which see *infra*, pp. 147, 148 n. 1.

the island of Salamis. Plutarch says that as the Megaræans still continued the war with the Athenians to the great misery of both sides, they agreed to make the Lacedæmonians arbitrators and judges between them.¹ Five Spartans were accordingly chosen. It appears that in the course of the hearing of the respective claims, Solon's representative cited the authority of Homer in support of his city's contention; and the arbitrators, who were further influenced by the Pythian oracles, ultimately decided in favour of Athens.

In the dispute between Athens and Mytilene regarding the possession of the promontory of Sigeum, Periander, the tyrant of Corinth, officiated as arbitrator. As Herodotus relates: 'Periander, the son of Cypselus, reconciled the Mytilenæans and the Athenians, for they referred to him as arbitrator; and he reconciled them on these terms, that the contending parties should retain what they held respectively; and thus Sigeum became subject to the Athenians.'²

Before the battle of Marathon, the Plataeans having been hard pressed by the Thebans appealed to the Lacedæmonians for help; but the latter, animated by ulterior motives, advised them to seek the protection of Athens. Whereupon the Thebans marched against the Plataeans, and the Athenians went to their assistance. As they were about to engage in battle, says Herodotus, the Corinthians intervened; for happening to be present and acting as mediators between them at the request of both parties, they prescribed the limits of the country to the effect that the Thebans should not interfere with those peoples of Boeotia, who did not

¹ Plut. *Solon*, c. 10: τῶν Μεγαρέων ἐπιμενόντων, πολλὰ κακὰ καὶ δρῶντες ἐν τῷ πολέμῳ καὶ πάσχοντες ἐποίησαντο Λακεδαιμονίους διαλλακτὰς καὶ δικαστὰς.

² Herodot. v. 95: Μυτιληναίους δὲ καὶ Ἀθηναίους κατήλλαξε Περίανδρος ὁ Κυψέλου· τούτῳ γὰρ διαιτητῇ ἐπετράπησαντο κατήλλαξε δὲ ὁδε· νέμεισθαι ἑκατέρους τὴν ἔχουσι. Σίγειον μὲν νυν οὕτω ἐγένετο ὑπ' Ἀθηναίοισι.—Cf. Diog. Laert. i. 74; Strabo, xiii. 38.

wish to be ranked among the Boeotians,—*ἐῶν Θηβαίους Βοιωτῶν τοὺς μὴ βουλομένους ἐς Βοιωτοὺς τελέειν.*¹

Between
Syracuse and
Hippocrates.

Hippocrates, the tyrant of Gela, in the course of extending his dominions, having vanquished the Callipolitæ, the Naxians, the Zancleæans, and the Leontines, was about to reduce also the Syracusans to subjection. But the Corinthians and Corcyraeans, as Herodotus relates, saved the Syracusans, after the defeat of the latter at the river Eleorus, by effecting a reconciliation, whereby Camarina which originally belonged to the Syracusans was to be given up to Hippocrates.² This was not, however, a case of arbitration proper.

Between
Corinth and
Corcyra.

The proposed arbitration between Corinth and Corcyra involved the question of the alleged right of the mother-state over its colony. The city of Epidamnus had been founded as a colony by Corcyra—herself a colony of Corinth—under the leadership of a Corinthian, in pursuance of long-established custom. It flourished rapidly; but in consequence of civil strife and barbarian attacks, it appealed to her mother-city, Corcyra, for assistance, which was, however, refused.³ Accordingly, acting under the advice of the Delphian oracle, the Epidamnians placed themselves under the protection of the Corinthians, their original founders. The latter took up their cause, partly because they themselves had been slighted by Corcyra, and partly because they considered that Epidamnus belonged as much to them as to Corcyra.⁴ In view of the extensive preparations of Corinth, Corcyraean ambassadors were despatched to summon the Corinthians to withdraw their troops, and to insist that they had nothing to do with Epidamnus. But if they made any claim to it, the Corcyraeans offered to submit the cause for arbitration to such Peloponnesian States as both parties would

¹ Herodot. vi. 108.

² Herodot. vii. 154 : *ἐρρύσαντο δὲ οὗτοι ἐπὶ τοῖσδε καταλλάξαντες, ἐπ' ᾧ τε Ἴπποκράτει Καμαρίναν Συρηκουσίου παραδοῦναι.*

³ Thuc. i. 24.

⁴ Thuc. i. 25.

agree upon, and their decision was to be final; or, they were ready to refer the matter to the pronouncement of the Delphian oracle.¹ Corinth, however, rejected the overtures, and declared war.

On another occasion, according to Plutarch's report, when Corcyra was at variance with Corinth, Themistocles had been chosen to arbitrate between them, and effected a reconciliation. His award was to the effect that the Corinthians should pay down twenty talents, and that each State should have an equal share in the city and island of Leucas, as being a colony of both.²

In the conflict between Melos and Cimolos, 338 B.C., with regard to the possession of some small islands (viz. Polyægus, Heteria, and Libia) situated near Cimolos, Argos acted as arbitrator at the invitation, and in accordance with the decree, of the common council of the Greeks, *κοινὸν συνέδριον*, instituted in 338 B.C. The Argive functionaries, who appear to have included a president, a secretary (*γροφεύς*), and an assessor (*πεδιών = μετεών*, in the inscription), decided in favour of Cimolos.³

Between
Melos and
Cimolos.

¹Thuc. i. 28: εἰ δέ τι ἀντιποιοῦνται δίκας ἤθελον δοῦναι ἐν Πελοποννήσῳ παρὰ πόλυσιν αἷς ἂν ἀμφοτέροι ξυμβῶσιν ὀποτέρων δ' ἂν δικασθῆ εἶναι τὴν ἀποικίαν, τούτους κρατεῖν. ἤθελον δὲ καὶ τῷ ἐν Δελφοῖς μαντεῖῳ ἐπιτρέψαι.

²Plut. *Themistoc.* 24: γενόμενος γὰρ αὐτῶν κριτῆς πρὸς Κορινθίους ἐχόντων διαφορὰν, ἔλυσε τὴν ἔχθραν εἴκοσι τάλαντα κρίνας τοὺς Κορινθίους καταβαλεῖν καὶ Λευκάδα κοινῇ νέμειν ἀμφοτέρων ἀποικον.

³Hicks, 150; Michel, 14.—Cf. Sonne, *op. cit.* pp. 34 *seq.*—The following is the inscription on a marble slab found in Cimolos, and now in Smyrna:

Θεός.

Ἐκρινε ὁ δᾶμος ὁ τῶν
Ἀργείων κατὰ τὸ δόκη-
μα τοῦ συνεδρίου τῶν
Ἑλλάνων, ὁμολογη-
σάντων Μα[λ]ίων καὶ
Κιμωλίων ἐμμενὲν
αἰ κα δικάσαιεν τοῖ
Ἀργεῖοι περὶ τᾶν
[ν]άσων, Κιμωλίων

Between
Corinth and
Epidaurus.

There was a dispute between Corinth and Epidaurus (c. 250 B.C.) as to some territory situated in the mountainous region on the Saronic Gulf. Both towns were members of the Achaean league,¹ and were, on that account, debarred from referring their difference to a third city. According to the constitution of the league, the general assembly alone had jurisdiction in the case of controversies arising between the confederates.² A reference to a third city would necessarily involve the despatch of ambassadors, which was a privilege exercised by the Achaean towns only by the sanction of their federal council. Hence the disputants were obliged to apply to the congress.

By the order of the Achaeans, states the inscription,³ the Megaraeans pronounced judgment. The latter appointed a tribunal consisting of 151 judges, who repaired to the contested territory, and declared that it belonged to the Epidaurians. The Corinthians not

ἤμεν Πολύαιγαν, Ἐτή-
ρειαν, Λίβειαν. Ἐδί-
κασσαν νικῆν Κιμωλί-
[ο]vs. Ἀρήτευε Λέων
[β]ωλᾶς σευτέρας, Ποσιδά-
ων γρο[φ]εὶς βωλᾶς, Πέριλ-
λος πεδίων.

¹ See *supra*, pp. 26 *seq.*

² Cf. Dubois, *op. cit.* p. 143; and *supra*, p. 27.

³ Michel, 20; Dareste, Haussoullier, and Reinach, *Inscrip. jurid. grecques*, pp. 342-9.—Cf. Sonne, *op. cit.* p. 30; and J. F. and T. Baunack, *Studien auf dem Gebiete des griechischen und der arischen Sprachen* (Leipzig, 1886), vol. i. pp. 219-236.—This inscription on a marble slab was found at Epidaurus in 1886. The following gives the substance of the judgment (apart from the detailed delimitation) as above stated:

..... κατὰ τὸν αἶνον τὸν τῶν Ἀ-
χαιῶν δικαστήριον ἀποστείλαντες ἄνδρας ἑκατὸν πενήκοντα
ἕνα], καὶ ἐπελθόντων ἐπ' αὐτὰν τὰν χώραν τῶν δικαστῶν καὶ κρινάν-
των] Ἐπιδαυρίων εἶμεν τὰν χώραν, ἀντιλεγόντων δὲ τῶν Κορινθί-
ων τῶ] τερμονισμῶ, πάλιν ἀπέστειλαν τοὶ Μεγαρεῖς τοὺς τερμο-
ν[ιξ]οῦ[ν]τας ἐκ τῶν αὐτῶν δικαστῶν ἄνδρας τριάκοντα καὶ ἕνα κα-
τὰ τ]ὸν αἶνον τὸν τῶν Ἀχαιῶν. Οἷτοι δὲ ἐπελθόντες ἐπὶ τὰν χώραν
ἐ]τερμόνισαν κατὰ τὰδε.

accepting the decision, the Megaraeans, by the order of the Achaeans, once more sent thirty-one 'delimitators,' *τερμαστήρες*, taken from amongst the previously deputed judges; and on this occasion the delimitation of the frontiers was effected with great precision and thoroughness.

A frontier dispute, involving also a question of political relationships, between two Thessalian towns, Melitaea and Peria, was submitted to the judgment of the Aetolians (end of third century B.C.). The latter nominated four citizens from amongst themselves to officiate as arbitrators. In the award (contained in an inscription, couched in the Doric dialect¹), a certain delimitation of the territories in question was prescribed, so long as the Peraeans would remain united to the Melitaeans; but in the event of a separation being effected, another arrangement was indicated. Further, both towns were to enjoy the same laws, and certain commercial matters in dispute were to be referred to the aediles of Melitaea.

Between
Melitaea and
Peria.

A territorial controversy between Andros and Chalcis was submitted to Erythrae, Samos, and Paros.²

Between
Andros and
Chalcis.

The Heracleian Tables³ (*tabulae Heracleenses*), discovered in 1732 near Heracleia, contain an inscription which indicates, amongst other things, the determination of the boundaries of the sacred territory belonging to a temple of Bacchus.

Delimitation
of boundaries.

The difference between Lepreum and Elis, which arose out of the former's discontinuing to pay the annual tribute to Zeus, and impliedly asserting its independence, was submitted to the Lacedaemonians. According to the account of Thucydides, the Lepreans

Between
Lepreum and
Elis.

¹ Rangabé, t. ii. no. 692; Michel, 22.—Cf. Dubois, *op. cit.* p. 228; Szanto, *Das griechische Bürgerrecht*, p. 152; and Bérard, *De arbitrio . . .*, pp. 32-4.

² Plut. *Quaest. graec.* 30: ἐκ τούτου διαφορᾶς γενομένης, ἄνευ πολέμου συνέβησαν Ἐρυθραίοις καὶ Σαμίοις καὶ Παρίοις χρήσασθαι περὶ πάντων δικασταῖς.

³ *Corp. inscrip. Graec.* 5774-5.

had undertaken to pay a rent of a talent to the Olympian Zeus in consideration of having been permitted by the Eleans to cultivate some land taken from certain Arcadian tribes, against whom the Lepreans had assisted the Eleans, 421 B.C. Taking advantage of the occasion of the Peloponnesian war, the Lepreans ceased paying, and the Eleans accordingly tried to compel them. "The Lepreans then had recourse to the Lacedaemonians, who undertook to arbitrate. The Eleans suspected that they would not have fair play at their hands; they therefore disregarded the arbitration and ravaged the Leprean territory. Nevertheless, the Lacedaemonians went on with the case, and decided that Lepreum was an independent State, and that the Eleans were in the wrong. As their award was rejected by the Eleans, they sent a garrison of hoplites to Lepreum."¹

Between Paros
and Naxos.

A religious controversy between Paros and Naxos was referred to a tribunal of Eretrian judges, τὸ Ἐρετριέων δικαστήριον, and a conciliation, σύλλυσις, was effected.²

Between Argos
and the
Achaean.

The Mantineans officiated in an arbitration between Argos and the Achaeans. Aratus, the commander of the Achaean confederacy, had made a hurried march on Argos, as Plutarch relates, and then retired, thus exposing the Achaeans to the charge of making a warlike invasion in time of peace,—. . . ὡς ἐν εἰρήνῃ πόλεμον ἐξεννόχασι.³ The complaint was submitted to Mantinean judges; and, as Aratus did not make an appearance, Aristippus, who was the Argive representative, won his cause, and secured the imposition of a fine of thirty minae upon the Achaeans.⁴

¹ Thuc. v. 31: . . . οἱ δ' ἐτράποντο πρὸς τοὺς Λακεδαιμονίους, καὶ δίκης Λακεδαιμονίοις ἐπιτραπέισης ὑποτοπήσαντες οἱ Ἡλείοι μὴ ἴσον ἔξιν, ἀνέντες τὴν ἐπιτροπὴν Λεπρεατῶν τὴν γῆν ἔτεμον. οἱ δὲ Λακεδαιμόνιοι οὐδὲν ἦσσαν ἐδίκασαν, αὐτονόμους εἶναι Λεπρεάτας καὶ ἀδικεῖν Ἡλείους, καὶ ὡς οὐκ ἐμμενάντων τῇ ἐπιτροπῇ φρουρὰν ὀπλιτῶν ἐσέπεμψαν ἐς Λέπρεον.

² Corp. inscrip. Graec. 2265.

³ Plut. Arat. 25.

⁴ Ibid.: καὶ δίκην ἔσχον ἐπὶ τούτῳ παρὰ Μαντινεύσιν, ἣν Ἀράτου μὴ παρόντος Ἀρίστιππος εἶλε διώκων καὶ μυνῶν ἐτιμήθη τριάκοντα.

A settlement of the disputes between the Eleans and the Achaeans was effected by a celebrated athlete, Pantarces, an Elean, who seems, however, to have officiated as a mediator rather than as an arbitrator. Pausanias says that the inscription on the statue of Pantarces stated that the monument was an offering of the Achaeans, because he made peace between them and the Eleans, and procured the release of the prisoners on both sides.¹

Between the
Eleans and the
Achaeans.

In a boundary dispute between the Eleans and the Arcadians, it is related that judgment was pronounced by one Pyttalus, an Elean, who had been a victor in a boxing-match in the Olympic games.²

Between the
Eleans and
the Arcadians.

In the reign of Antigonus, the inhabitants of Lebedos, having been compelled to abandon their country, settled at Teos; whereupon certain difficulties arose between them and the other inhabitants of Teos. Mytilene was appointed by Antigonus to act as arbitrator, and the differences in question were amicably adjusted.³

Between
Lebedos and
Teos.

Pausanias mentions a report that when Damophon was the sovereign of Pisa, he inflicted serious injuries on the Eleans, but that on his death, the Pisans disclaimed, as a State, any share in his misdeeds, and were ready to make peace; whereupon their differences were settled by sixteen women chosen from among the eldest and most distinguished in rank and reputation in the sixteen cities then existing in Elis.⁴

Between Elis
and Pisa.

¹ Pausan. vi. 15. 2: Παντάρκην δὲ Ἑλλείων Ἀχαιῶν ἀνάθημα εἶναι τὸ ἐπίγραμμα τὸ ἐπ' αὐτῷ φησιν· εἰρήνην τε γὰρ Ἀχαιοῖς ποιῆσαι καὶ Ἑλλείους αὐτόν, καὶ ὅσοι παρ' ἀμφοτέρων πολεμούντων ἐαλώκεσαν, ἄφεσιν καὶ τούτοις γενέσθαι δι' αὐτόν.

² Pausan. vi. 16. 8.

³ P. Le Bas, *Voyage archéologique*, v^e. partie, no. 86.

⁴ Pausan. v. 16. 4: Δαμοφῶντά φασι τυραννοῦντα ἐν Πίσῃ πολλά τε ἐργάσασθαι καὶ χαλεπὰ Ἑλλείους· ὡς δὲ ἐτελεύτησεν ὁ Δαμοφῶν, οὐ γὰρ δὴ οἱ Πισαῖοι συνεχώρουν μετέχειν δημοσίᾳ τοῦ τυράννου τῶν ἀμαρτημάτων, καὶ πῶς ἀρεστὰ καὶ Ἑλλείους ἐγένετο καταλύεσθαι τὰ ἐς αὐτοὺς ἐγκλήματα, οὕτως ἐκκαίδεκα οἰκουμένων τηνικαῦτα ἔτι ἐν τῇ Ἑλλείᾳ πόλει γυναῖκα ἀφ' ἐκάστης εἵλοντο διαλύειν τὰ διάφορά σφισιν ἥτις ἡλικία τε ἦν πρεσβυτάτη καὶ ἀξιώματι καὶ δόξῃ τῶν γυναικῶν προεῖχεν. . . ἀπὸ τούτων μὲν αἱ γυναῖκες οὔσαι τῶν πόλεων Πισαίᾳ διαλλαγὰς πρὸς Ἑλλείους ἐποίησαν.

This report, however, is probably as much legendary as the Homeric account of Arete, the wife of Alcinous, king of the Phaeacians, who is said to have assisted her friends' husbands to settle their disputes.¹

Between
Athens and
Oropus.

The Athenians having, through pressure of necessity, made a pillaging expedition against Oropus, the Oropians appealed to the Roman senate (156 B.C.), who nominated the Sicyonians as arbitrators, with the instruction that they should impose a fine on the offenders in proportion to the injury that had wantonly been inflicted. The Athenians failed to send a representative at the hearing of the cause, and accordingly the Sicyonians sentenced them to pay a fine of five hundred talents; but on the petition of the Athenians (151 B.C.), who despatched to Rome the celebrated embassy consisting of the three philosophers, Diogenes, Critolaus, and Carneades, the Roman senate reduced the sum to a hundred talents.² Even this fine was not paid; and subsequently the Oropians consented to receive an Athenian garrison, and to give hostages. The failure to carry out this arrangement, as Barbeyrac points out, was the cause later of a war between the Romans and the Achaeans,—a war which put an end to what liberty there had still remained in Greece.³

It may be mentioned that though we perceive in this case apparently an exercise of sovereign power on the part of Rome, yet, at bottom, it was a case of arbitration proper, on the ground that Rome was not at the time

¹ Hom. *Odys.* vii. 74 :

οἴσι τ' ἔν φρονέησι, καὶ ἀνδράσι νέικεα λύει.

² Pausan. vii. 11. 4-5 : Σικυώνιοι μὲν οὖν οὐκ ἀφικομένοις ἐς καιρὸν τῆς κρίσεως Ἀθηναίους ζημίαν πεντακόσια τάλαντα ἐπιβάλλουσι Ῥωμαίων δὲ ἡ βουλὴ δεηθεῖσιν Ἀθηναίους ἀφίσι πλὴν ταλάντων ἑκατὸν τὴν ἄλλην ζημίαν.

³ Barbeyrac, *op. cit.* i. no. 437, p. 397 : “L'inexécution de ce traité fut une sémence, qui quelques années après, donna occasion à une guerre des Romains contre les Achéens, dont les suites entraînent la perte de tout ce qui restait de liberté dans la Grèce.”

at war with Athens, nor was Greece yet reduced to a Roman province.¹

There had been several disputes, some dating from very early times, between Priene and Samos, as to the possession of some territory situated on the Asiatic coast. About the middle of the sixth century B.C., a difference between them was settled by Bias, one of the seven sages of Greece; two centuries later, Lysimachus acted as arbitrator between them;² afterwards Antiochus Theos intervened, and despatched a number of commissioners; then Ptolemaeus Philometor arbitrated; and finally, about 135 B.C., a commission of Rhodian judges officiated, under the authority of the Romans.³

An inscription, found in Delos in the temple of Apollo, presents a convention between Lato and Olus (latter half of second century B.C.), agreeing to refer all their disputes of whatever nature they may be to the arbitration of Cnossus. It provides for the setting up of steles recording the compact in the temple at Delos. Cnossus was to deliver judgment within six months, and was empowered to cause the decision to be engraved on steles, and to have the latter deposited in Crete within thirty days. The judgment pronounced and recorded by the Cnossians was ever to have the force of law; so that henceforth every grievance, to which the said judgment relates, was to be terminated. Copies of the present convention were to be sent to Cnossus, and also exchanged between Lato and Olus. The contending parties engaged to submit to the convention, and to the arbitral judgment, under penalty of a specified fine; and provision was made for the recovery thereof in case of failure to acquiesce in the decision

¹ Cf. the next chapter, where are mentioned other cases of arbitration between Greek communities, but as conducted under Roman sovereignty.

² Cf. *Corp. inscrip. Graec.* 2254.

³ Cf. *Corp. inscrip. Graec.* 2905; Dittenberger, *Syll. inscrip. Graec.* 241; Newton and Hicks, *Collection of ancient Greek inscriptions in the British Museum*, pt. iii. no. 405.

of the arbitrators. The contracting parties, including the people of Cnossus, reserved to themselves the liberty to modify the treaty, if so found desirable afterwards; and such modifications were to have juridical force.¹

Arbitration by
the city of
Cnidus
between two
citizens of Cos
and the city of
Calymna.

To conclude these examples of Greek arbitration, it will be particularly instructive to refer to a case which occurred some time in the second century B.C. This instance will further illustrate the rules of procedure (obviously based for the most part on Attic private law) which have been briefly mentioned above; it will, moreover, present certain novel points, and, above all, it will show to what a remarkably advanced stage of development the arbitral institution had already attained in antiquity, and how carefully the interests of justice were safeguarded. The source of this information is an inscription² on a white marble stele, which was discovered by Mr. (afterwards Sir) C. T. Newton on the site of the temple of Apollo in Calymna (an island between Leros and Cos, in the Sporades group), and is now in the British Museum.

Two citizens—probably bankers—of Cos having lent a sum of money to the city of Calymna, their representatives now claimed thirty talents; and, it appears, the defendant city pleaded a set-off. In the formal con-

¹ Michel, no. 28.—Cf. T. Homolle, in *Bulletin de corresp. hellén.* vol. iii. (1879), pp. 290-312, where there is a translation, together with a commentary.—Perhaps the most interesting provision is the mutual undertaking on the part of Lato and Olus to accept the arbitral decision, under penalty of a fine of ten talents payable to Cnossus. This is seen in ll. 34-36 of the inscription:

. . . οἷ τε Λάτιοι καὶ οἱ Ὀλόντιοι τοῖς Κνωσίοις ἑκάτεροι ἀργυρίω Ἀλεξανδρείων ταλάντων δέκα [ἑφ' ὄ]ι ἐμμεῖοντι ἐντούτω(ι) τῶ(ι) ἐγγρόφω(ι) καὶ ἐν τοῖς κριθένσι ὑπὸ τῆς πόλε[ο]s.

² C. T. Newton, *Collection of ancient Greek inscriptions in the British Museum*, pt. ii. no. 299, pp. 84 *seq.*; *Bulletin de corr. hellén.* vol. x. (1886), pp. 235 *seq.*; Dareste, Haussoullier, and Reinach, *Recueil des inscrip. jurid. grecques*, pt. i. pp. 158 *seq.* (the latter is practically a reproduction of the one immediately preceding, each containing, besides the text, a translation and commentary by M. Dareste).—Cf. E. Sonne, *De arbitris externis . . .*, pp. 49 *seq.*

tract, *συγγραφή*, relating to the original transaction, provision was evidently made for the submission of any dispute arising out of the said agreement to the arbitration of the city of Cnidus (the πόλις ἑκκλητος), one of the principal Doric cities of Caria. Accordingly the question was there brought before a body of 204 jurors, presided over by the strategoi. (A similar judicial assembly of 151 judges officiated in the case of Megara arbitrating between Corinth and Epidaurus, c. 250 B.C.,¹ and a still larger body of 600 judges in that of Miletus arbitrating between Sparta and Messene, 140 B.C.)² The contending parties, here described as ἀντίδικοι,³ were represented by advocates (συνήγοροι,—συνάγοροι in the inscription), whose number was limited to four on each side, and who were also permitted to give evidence,—an arrangement which was not, however, foreign to Greek common law practice :

... συναγόρους δὲ ἐξέστο ἑκατέροις
παρέχασθαι τέτορας ἐξέστω δὲ καὶ μαρτυρὲν τοῖς συναγόροις.⁴

The litigants were also permitted to bring with them their own clerks or secretaries (γραμματεῖς),⁵ whose duty it was to recite the documents before the tribunal.

The various steps of the procedure were regulated by specific provisions. The judges, in the first place, took an oath solemnly engaging to pronounce a just and unprejudiced sentence. Then each of the parties made an affidavit,—a proceeding described in the epigraphic record as ἀνωμοσία (which bears a close analogy to the *litis contestatio* of Roman jurisprudence). The decrees of the two cities, as well as other public documents relating to the cause, were produced from the municipal archives (ἐκ δαμοσίου), and, after they had been duly sealed, were delivered to the presiding

¹ See *supra*, p. 142.

² See *infra*, p. 163.

³ Cf. Plato, *Phaedrus*, 273c, where the term is applied to parties to an ordinary suit.

⁴ Newton, *loc. cit.* ll. 18-19.

⁵ Cf. the γροφεύς in the Melos-Cimolos arbitration, *supra*, p. 141.

strategoi, who broke the seals and transferred the documents to the suitors. The evidence on both sides was also laid before the court prior to the commencement of the pleadings,—to which a limit was set by certain measurements of the clepsydra. This evidence was of two kinds: firstly, oral, given personally by those witnesses (*μαρτυρίαι*) who were able to be present in Cnidus, the mode of laying it before the court being by examination-in-chief and cross-examination (which would follow from the expression *ἀνάκρισις*¹); secondly, written evidence, consisting of depositions made on oath (*ἐκμαρτυρία*,—in the inscription *ἐγμαρτυρία*) before the prostates² in each town, on a fixed day, by those who swore that they could not attend the court. Any of the parties to the suit had a right to be present whilst these depositions were being made. Further, full opportunities were afforded for the examination of accounts; and all subjects of the defendant city who had occasion to proceed to Cos for this purpose, or in connection with the obtaining of necessary evidence, or challenging the depositions of their opponents, received a safe-conduct (*ἀσφάλεια*), which protected them from any seizure that might otherwise be attempted by the plaintiffs in satisfaction of their claim.

τοῖς δὲ παραγενομένοις Καλυμ-
νίων εἰς Κῶν ἐπὶ τὰν ἐπάκουσιν τὰν μαρτυριῶν ἀσφάλειαν δότω
ἐν Κῶ Φιλίνος.³

When the necessary depositions had been duly drawn up, the prostates affixed the seal of the city thereto, and the parties, if they chose, could add their own seals to the same. Then the prostates of the two towns exchanged copies of the depositions with each

¹ Thus, in a private action or prosecution in Athens the archons were said *ἀνάκρισιν δίδουσι* or *παραδιδόναι*.—Cf. Plato, *Laws*, ix. 855 E; *Charmides*, 176 c.

² Cf. vol. i. pp. 162 *seq.*

³ Newton, *loc. cit.* ll. 42-4.—This Philinos, acting on behalf of the young plaintiffs, was empowered, under the circumstances, to grant such assurances of inviolability.

other (which had to be done within twenty days), and at once furnished also the litigants with copies.

Finally, the judges, after hearing the claim, inspecting the documents, and weighing the evidence, pronounced by 126 votes to 78 in favour of Calymna, the defendant city, which forthwith caused the decision to be engraved on a stele, and to be deposited in the temple of Apollo.

CHAPTER XXI

INTERNATIONAL ARBITRATION IN ROME

Attitude of
Rome to
international
arbitration.

As the Hellenic race was supreme in intellectual power, in artistic taste, in philosophical speculation, so the Romans were pre-eminent in juristic, administrative, and military affairs. The aim of Rome was the establishment of a universal empire; every means was resorted to for the attainment of that object, and all proceedings that might conceivably jeopardize her prospects were avoided or carefully veiled. Hence, in her earlier history, when her empire was yet in the course of making, and her policy was more or less subject to uncertain consequences, Rome did not recognize international arbitration, and, in any particular case, would have been very loth to submit to it. Only in her later history, when her domination was assured, and her might unquestioned did the practice of arbitration arise, and become frequent; but then it was not so much her own disputes with other peoples that were submitted to arbitral tribunals, but rather those between cities and communities that had been worsted by her in the field, or were otherwise obliged to acknowledge her suzerainty. Conquest brought peace, and peace favoured arbitration. At the very height of Rome's power, under Augustus, for example, the blessings of peace were often celebrated. It was then also that certain antithetical elements manifested themselves in Roman life,—a recognition of the paramount virtue and duty of patriotism, together with a widespread notion of the beneficence of cosmopolitanism; and an

all-absorbing consciousness of the supreme arbitrament of war, together with clear signs of a pacific disposition. Indeed, Rome had, as a French writer has observed, two souls: a Roman soul which represented her true nature, and a Greek soul which was borrowed; and, hence, we find her civilization presenting certain strange aspects.¹

Rome was always ready to act as a mediator between foreign States,—though invariably with some ulterior motive.² First the senate, and afterwards the emperor, were fain to adjudicate in foreign controversies. In disputes arising out of the administration of provincial governors, or those generally between the various communities subjected to the Roman authority, the senate, or the emperor, as the case may be, was usually the first, and always the final, judge. Occasionally when alien peoples agreed to refer territorial disputes to the arbitration of the senate, Roman policy readily discovered some pretext or other for a more thorough intervention, and, subsequently, for taking possession herself of the territory in question. And so when, ultimately, the ‘pax Romana’ was established practically in the whole known world, and Rome became its autocratic mistress, international arbitration in the strict juridical sense of the term—that is, implying a voluntary submission to an impartial tribunal of conflicts between independent States—was naturally rendered impossible.

There are, however, several cases of interstate arbitration which it will be of advantage to consider here, as some of them, in a sense, show an advance on the previously cited examples in Greece, and a further approximation to modern conceptions, inasmuch as they are more strictly ‘international,’—at least, from

Kinds of
Roman
arbitrations.

¹ M. Revon, *L'arbitrage international* (Paris, 1882), pp. 90-91: “Rome a deux âmes: une âme romaine, qui est sa vraie nature, et une âme grecque, empruntée; de là certains aspects bizarres de sa civilisation.”

² Cf. Liv. xlv. 14.

an ethnographical point of view, if not entirely from a political. These cases may—adopting the division of a recent Italian writer¹—be suitably arranged into three classes: international, federal, and administrative controversies.²

Cases of international arbitration.

Between Delphi, Amphissa, etc.

Amongst international arbitrations the following may be mentioned :

In the arbitration between Delphi and Amphissa, Myon, and Anticyra,³ 191 B.C., the award was delivered by the *hieromnemes*,⁴ and afterwards confirmed by the whole Amphictyonic Council. The proceedings that were adopted are not known with any degree of certainty. Either the Roman senate was invited by the disputants to officiate, or they referred their difference to the consul Acilius. Though the designs of Rome were at this time already being put into operation, Greece had not yet been reduced to a Roman province.

Between Antiochus III. and Eumenes II.

The battle of Magnesia, 190 B.C., where Lucius Scipio completely overthrew Antiochus, finally decided the fate of Asia for the entire duration of the Roman empire. In the regulation of Asiatic affairs which followed, Antiochus was obliged to renounce his pretensions to any portion of Asia Minor, and to cede all his possessions in Europe; and, besides, numerous additional restrictions and prohibitions were imposed upon him. By way of compensation, however, the Romans bestowed on him the title of a friend of the Roman commonwealth, ‘amicus populi Romani,’⁵ which

¹ E. de Ruggiero, *L'arbitrato pubblico* . . . to which work the present writer is largely indebted for the remaining portion of this chapter.

² Some of these instances, of course, might well be considered, from a certain point of view, as Greek examples related to those of the previous chapter.

³ Ruggiero, pp. 232 *seq.*; *Corp. inscrip. Lat.* iii. 567 (7303); *Corp. inscrip. Graec.* i. 1711.—Cf. J. Schmidt, *Beiträge zur Herstellung dreier delphischer Urkunden* (in *Hermes*, vol. xv. 1880, pp. 275-288).

⁴ As to the part of these functionaries in the Amphictyonic Council, see *supra*, p. 6.

⁵ Liv. xxxviii. 38; Polyb. xxii. 26. 1.

thus implied his independence. Eumenes, king of Pergamus, who had sided with Rome, received Lydia and Phrygia, Mysia and Lycaonia, the greater part of the peninsula of Asia Minor, and he was independent *de iure*, but *de facto* under Roman protection. Subsequently a dispute arose between Eumenes and Antiochus¹ as to whether Pamphylia lay on this side of or beyond the Taurus, and therefore whether it belonged to the king of Pergamus, or to the king of Syria.

It appears that the controversy was first referred to Gnaeus Manlius Volso, who, ceasing to be consul in 188 B.C., remained as proconsul in Asia to complete his command.² The settlement of the conflict being beyond his power, he submitted it to the senate, as the only competent authority. L. Cornelius Scipio was accordingly despatched to Asia as a special commissioner; and whether his award was pronounced in accordance with the senate's instructions, or was given on his own responsibility is not definitely known. In any case, it would seem that Pamphylia was not adjudged to either of the contending parties, because some twenty years later, 169 B.C., we find it sending ambassadors to Rome as an independent State.³

In 189 B.C., Sparta endeavouring to occupy Las, a maritime city of Laconia, the latter complained to the Achaean league, whose head Philopoemen demanded the surrender of the instigators; and, failing to obtain them, he made war on Sparta. The old state of property was then re-established there, the laws of Lycurgus were superseded by Achaean laws, and the fortifications were pulled down, 188 B.C. Ambassadors then arrived in Rome from Sparta to protest against these proceedings, and from Achaea to justify them. Roman mediation proved to be of little avail; for,

¹ Ruggiero, pp. 238 *seq.*; Polyb. xxi. 48; Liv. xxxviii. 39; xxxix. 22.

² Liv. xxxviii. 35, 37; Polyb. xxii. 24, etc.

³ Liv. xlv. 14: "... Pamphylii legati coronam auream... in curiam intulerunt..."

^a Between Sparta and the Achaean league.

later, the senate was invited by all parties to arbitrate¹ in the entire dispute,—“an annoying task,” says Mommsen, “which was the righteous punishment of the sentimental policy that the senate had pursued.”² In 184 B.C. Appius Claudius Pulcher, along with other commissioners, was despatched to Greece, and in the general assembly convened at Clitorium, in Arcadia, caused to be cancelled the sentence of death that had been passed on two Spartan emigrants, but referred the main questions at issue to Rome. The senate again charged Appius Claudius together with Q. Caecilius Metellus, and T. Quinctius Flaminius to adjudicate. The award pronounced by them was to the effect that Sparta should re-enter the Achaean league, that she should be permitted to reconstruct her fortifications, and re-establish the Lyncurgan institutions, and that the Achaean league should no longer exercise criminal jurisdiction over the Spartans. It was also ordered that this sentence should be committed to writing, and signed both by the Lacedaemonians and the Achaeans,—“scribique id decretum et consignari a Lacedaemoniis et Achaeis.”³

Between
Cnossus and
Gortyna.

Gortyna had deprived Cnossus of a portion of its territory called Licastium and Diatonium. It is probable that the two cities in the first place applied to Rome to settle their difference, and that the senate afterwards referred the question to the Roman commissioners who were then in Greece, 184 B.C.⁴ Appius Claudius Pulcher, after his arrival in Crete, gave his decision in favour of Cnossus. From the words of Polybius, *καὶ ποιησαμένων λόγους ὑπὲρ τούτων . . .*,⁵ it would seem that it was a kind of compromise, effected through the mediation of Claudius.

¹ Ruggiero, pp. 240 *seq.*; Liv. xxxix. 33, 37, 48; Pausan. vii. 9. 5.

² *Röm. Gesch.* vol. i. p. 750: “. . . eine Belästigung, die die gerechte Strafe für die befolgte sentimentale Politik war.”

³ Liv. xxxix. 48.

⁴ Ruggiero, pp. 244 *seq.*; Polyb. xxii. 19. 1 (xxiii. 15).

⁵ xxiii. 15.

Sparta and Megalopolis¹ had a territorial dispute, which they submitted to Callicrates. His decision was not accepted by Sparta, which applied to the Achaean league. The latter imposed a fine on Sparta, which still refused to give up the contested territory, but offered to submit to Roman arbitration. The senate accordingly deputed two of its members to decide the cause, 164 B.C.

Between
Sparta and
Megalopolis.

It may be here mentioned that later Diaeus, the Achaean strategus, in order to divert public attention from an act of corruption committed by him, incited the confederation to commence hostilities against Sparta, ostensibly on the ground that the Spartans in their previous boundary dispute had instead of appealing to the council of the league, violated its laws by despatching a private embassy to Rome.²

The controversy of the year 159 B.C. between Athens and Delos³ was of a private international character. The Roman arbitrators pronounced in favour of the Achaean league, and recognized its judicial competence with regard to the various confederates. Thus, Polybius relates that after Delos had been granted to Athens, the Delians removed to Achaea; and having been enrolled members of the confederacy, they wished to have their claims against the Athenians decided according to the convention existing between the Achaean league and Athens. The Athenians, however, denied their right to plead under that engagement; accordingly, the Delians asked leave of the Achaeans to make reprisals on the Athenians. The latter despatched ambassadors to Rome in connection with this matter, and obtained a decision to the effect that judgments pronounced by the Achaeans, in accordance with their laws, concerning the Delians possessed juridical validity and binding force,—*ἔλαβον ἀπόκρισιν, κυρίας εἶναι τὰς κατὰ τοὺς νόμους γεγενημένας παρὰ τοῖς Ἀχαιοῖς οἰκονομίας περὶ τῶν Δηλίων.*⁴

Between
Athens and
Delos.

¹ Ruggiero, pp. 246 *seq.* Cf. Polyb. xxxi. 9.

² See *supra*, p. 27. ³ Ruggiero, p. 248.

⁴ Polyb. xxxii. 17.

Between
Melitaea and
Narthacius.

The difference between Melitaea and Narthacius¹ (150-146 B.C.) referred to the occupation of a certain territory by Narthacius. The latter claimed that it was recognized in 196 B.C. by the proconsul, T. Quinctius Flaminius as belonging to Narthacius; but the Melitaeans contended that its occupation by them was established after that, and that, moreover, the territory had been theirs from time immemorial. An inscription, engraved on both sides of a stone tablet found in Thessaly, gives the translation of a *senatusconsult* relating to the contending claims. First, there is a preamble, added at the instance of Narthacius, showing the date of the decree of the senate, and its publication by the magistrates of Thessaly and of Narthacius. Then follows a summary of the claims advanced before the senate by the deputies of Melitaea, after that the same in the case of Narthacius, and finally the decision of the senate.

Between
Hierapytna
and Itanos.

Owing to the territorial controversy between Hierapytna and Itanos (138-132 B.C.),² war broke out between them. On an appeal of Hierapytna to Rome, the senate despatched to Crete Servius Sulpicius together with other commissioners, and an arrangement in favour of Hierapytna was arrived at. But it is not clear whether these proceedings were of the nature of mediation or of arbitration proper. Itanos did not acquiesce, and applied to the senate to reconsider the question, which was thereupon referred to the city of Magnesia, with instructions embodied in a *senatusconsult*. Magnesia decided in favour of Itanos, but Hierapytna again appealed to Rome. The case was then submitted to the same city, whose assembly (*δημος*) nominated a body of seventeen arbitrators presided over by a certain sacred official (*νεωκόρος*). There is no record of their sentence.

¹ Ruggiero, pp. 251 *seq.*—Cf. Willems, *Le sénat de la répub. rom.* vol. i. pp. 708 *seq.*

² Ruggiero, pp. 259 *seq.*; *Corp. inscrip. Graec.* 2561 b (in *add.*).

Next may be mentioned some examples of federal, or quasi-international, controversies which were submitted to arbitration. Substantially these offer but little difference from the cases of international arbitration that have just been considered. Of the three kinds of arbitration relating to Rome, the settlement of international disputes partook of a politico-diplomatic character, that of administrative differences was purely an act of government on the part of Rome, whilst the adjustment of federal controversies occupied an intermediate position between these, much in the same way as hegemony lay between dominion on the one hand, and protection on the other.¹ Federal arbitration did not possess to the same extent the voluntary character of international arbitration; for the Roman federal system was not based on perfect political equality of the allied States. Still, it exhibited the formal characteristics of a true arbitral procedure.

Cases of
federal
arbitration.

The federal controversy between Aricia and Ardea² (446 B.C.) is the most ancient in Roman history, and was submitted to the arbitral judgment of Rome. Aricia was one of the members of the Latin confederation. The decision given in favour of the latter caused internal dissensions in Ardea; the people were desirous of joining the Volsci, whilst the nobility adhered to Rome. Hence the Romans taking advantage of this intestine strife despatched a band of colonists to Ardea, and distributed amongst them the lands of those who were opposed to Rome (442 B.C.).

Between
Aricia and
Ardea.

Dionysius relates that the Aricini and the Ardeates having often fought for a tract of contested land, and being worn out with frequent losses, referred their difference to the arbitration of the Romans. At the assembly of the people, one Scaptius, a plebeian, pointed

¹ Cf. Ruggiero, p. 76: "L'arbitrato federale non è un puro atto di governo, come l'amministrativo, nè politico-diplomatico, come l'internazionale; esso sta tra l'uno e l'altro, nella stessa guisa che l'egemonia sta tra il protettorato e il dominio."

² *Ibid.* pp. 268 *seq.*

out that the parties admitted that the territory in question formerly belonged to Rome. The consuls, on account of this suggestion, were afraid that the event of the trial would prove neither just nor becoming, if the Roman people, after they had been chosen umpires by others, should take away the contested land from the litigants without ever having claimed it, and adjudge it to themselves.¹ Ultimately, however, by the votes of the people it was declared that the disputed territory belonged to Rome.²

Mommsen, speaking of the liability to disunion of the Romano-Latin league, due partly to the increase of the Roman hegemony, and partly to particular acts of odious injustice perpetrated by the leading community, —“zum Theil in einzelnen gehässigen Ungerechtigkeiten der führenden Gemeinde”³—mentions an instance of the latter in the infamous sentence of arbitration between the Aricini and the Rutuli of Ardea, —“der schmachliche Schiedsspruch zwischen den Aricinern und den Rutulern.”⁴

Between
Carthage and
Massinissa.

In the Roman treaty of peace with Carthage,⁵ it had been stipulated that the Carthaginians should retain their territory undiminished, and that the Numidians, under Massinissa, should hold such possessions as the latter or his predecessor had within the Carthaginian bounds; and a further clause forbade the Carthaginians to make war on Roman allies. Hence, according to the letter of the treaty, Carthage was actually debarred from the right to expel Numidian aggressions. In 193 B.C. the province of Emporiae on the lesser Syrtis, the wealthiest portion of Carthaginian territory, was

¹ Dion. Hal. xi. 52 : Ταῦτα τοῦ Σκαπτίου λέγοντος αἰδῶς εἰσῆει τοὺς ὑπάτους ἐνθιμονμένους, ὡς οὔτε δίκαιον οὔτ' εὐπρεπὲς ἢ δίκη λήψεται τέλος, ἂν τινα ἀμφισβητουμένην ὑφ' ἑτέρων χώραν δικαστῆς αἰρεθεῖς ὁ Ῥωμαίων δῆμος, μηδέποτε αὐτῆς ἀντιποιησάμενος ἑαυτῷ προσδικάσῃ τοὺς ἀμφισβητοῦντας ἀφελόμενος.

² *Ibid.*: καὶ γίνεταί πάσαις ταῖς ψήφοις ὁ Ῥωμαίων δῆμος τῆς ἀμφιλόγου χώρας κύριος.—Cf. Liv. iii. 71, 72; Ruggiero, p. 268.

³ *Röm. Gesch.* vol. i. p. 346. ⁴ *Ibid.* ⁵ Ruggiero, pp. 270 *seq.*

partly plundered by the Numidians, and partly even seized by them; and continual encroachments and seizure of larger territory followed. Carthaginian embassies again and again came to Rome, adjuring the senate either to allow them to defend themselves by arms, or to appoint a court of arbitration with power to enforce its award, or to regulate afresh the frontier. Roman commissioners were sent to Africa; they made investigations, but came to no decision. At most a kind of provisional judgment was given, mainly recognizing the fact of possession (157 B.C.). Polybius points out that the decisions of Rome in these disputes invariably went against Carthage, not on the merits of the particular cases, but because the judges had regard to their own country's interests.¹

Livy observes that the Carthaginians claimed the disputed territory on the ground, firstly, that it had been the property of their ancestors, and, secondly, that it was given to them by Syphax, who had expelled Gala, the father of Massinissa. But, on the other hand, Massinissa urged that he had retaken possession of it as part of his father's kingdom, and held it under the law of nations, and that the advantage lay with him, both because of the merits of his cause, and of the fact of present possession.²

These arbitral proceedings were of a federal, rather than of a truly international, character, inasmuch as Massinissa was a Roman *socius*, and Carthage also a Roman *foederata*.

The historical accuracy of the boundary dispute between Neapolis and Nola³ (195-183 B.C.), submitted to the arbitration of Rome, has been doubted, but the reasons suggested therefor are far from convincing. Cicero refers to the discreditable conduct of the arbitrator, who was said to have been Q. Labeo. The report is, says Cicero, that the senate appointed him

Between
Neapolis and
Nola.

¹ Polyb. xxxii. 2.—Cf. Liv. xxxiv. 62; xl. 17; xlii. 23, 24.

² Liv. xl. 17.

³ Ruggiero, pp. 276 *seq.*

arbitrator in a boundary controversy between Nola and Neapolis; and having arrived at the contested territory, he advised the parties not to be greedy or grasping, and rather to retire than to push forward. They followed his counsel, and a belt of neutral land was left between them. So he fixed their frontiers according to their own suggestion, and awarded the unclaimed tract to the Roman people. "This," Cicero exclaims, "is surely deceit, and not arbitration,"—'decipere hoc quidem est, non iudicare.'¹

Between Pisae
and Luna.

Pisae² had been an ally of Rome from the year 225 B.C., and Luna was in 177 B.C. established as a Roman colony in the former territory of the Apuani, and served to protect the frontier against the Ligurians. The cause of the dispute between the two towns was the assignment to colonists of Luna of lands situate within the territory of Pisae. The colonists maintained that the said lands had been allotted to them by the Roman commissioners charged with the partition thereof, whilst Pisae held that their occupation of it was unjustifiable. Accordingly, the Roman government appointed five arbitrators to investigate the allegations and to settle the controversy.

Between
Ateste and
Patavium.

The cities of Ateste and Patavium had a territorial dispute which was referred to Caecilius, the proconsul, 141 B.C. Both appear to have been allies of Rome at the time.³

Between
Sparta and
Messene.

The contest between Sparta and Messene⁴ (140 B.C.—A.D. 25) was also in reference to a territory,—a mountainous district described by Tacitus as the 'ager Dentheliatas.' Both parties claimed this tract of land, and—what is a particularly interesting incident of the controversy—cited in their support the authority of

¹ *De offic.* i. 10.—Cf. Val. Max. vii. 3, 4.

² Ruggiero, pp. 279 *seq.*; cf. Liv. xlv. 13.

³ *Ibid.* pp. 281 *seq.*; *Corp. inscrip. Lat.* v. 2491.—Cf. Mommsen's note in *Corp. inscrip. Lat.* i. p. 153.

⁴ Ruggiero, pp. 283 *seq.*—Cf. Michel, 31; Dittenberger, 240.

poets and annalists.¹ Thus, as Tacitus says, whilst the Lacedaemonians advanced extracts from history and passages of ancient poetry, the Messenians produced an ancient chart of the Peloponnese, showing its division amongst the descendants of Hercules; and this document, they alleged, showed that the ager Dentheliatem, where the temple of the Limnatidian Diana stood, had been allotted to the king of Messene. Further they pointed out that there were also extant inscriptions on stone or brass tablets, which confirmed their claims. "If fragments of poetry and loose scraps of history were to be admitted," comments the Roman historian, "they had a fund of evidence more ample and directly in point."²

This was a long-standing dispute between the two cities. Already in 338 B.C., after the battle of Chaeronea, judgment had been given by Philip of Macedon in favour of Messene, as a result of the finding of a court of arbitrators, including representatives from all parts of Greece. More than a century later a similar verdict was pronounced by Antigonus after he had defeated Cleomenes of Sparta at the battle of Sellasia, 221 B.C. Afterwards a decree of L. Mummius was likewise in favour of the Messenians. About 140 B.C. Sparta appealed to the Roman senate, which nominated the city of Miletus as arbitrator. Accordingly a court of six hundred judges was established, who heard the claims and arguments of representatives from the contending parties; and, it appears, by 584 votes against 16 it was decided that the territory in question having been in the possession of Messene before the arrival of L. Mummius in that province ought therefore to be

¹ Cf. *supra*, p. 139, where the authority of Homer is invoked by Solon's representative in the arbitration between Athens and Megara.

² Tacit. *Ann.* iv. 43: "Contra Messenii veterem inter Herculis posteros divisionem Peloponnesi protulere, suoque regi Dentheliatem agrum, in quo id delubrum, cecisise; monimentaue eius rei sculpta saxis et aere prisco manere. quodsi vatum, annalium ad testimonia vocentur, plures sibi ad locupletiores esse."

adjudged to the Messenians. Towards the end of the Republic the conflict was revived; and the proconsul, Atidius Geminus, arbitrated in pursuance of the instructions of the senate. Finally in A.D. 25 both cities made a direct appeal to Rome through their ambassadors, and the senate pronounced its award in favour of Messene.

Between
Ateste and
Vicetia.

A territorial dispute between Ateste and Vicetia¹ (135 B.C.) was settled by the proconsul Atilius Sarranus, who was appointed by the Roman government to officiate as arbitrator.

Between
Genua and the
Vitirii.

The case of Genua and the Vitirii² (117 B.C.) involved important questions, apart from those of boundaries. Genua was an ally of Rome, and the Vitirii were in a condition of dependence with regard to Genua. The dispute arose partly as to the competence of the courts of Genua, and partly as to certain territories. Quintus Nuncius Rufus and his brother Marcus were appointed by Rome to arbitrate. Their award accordingly determined the limits of the *ager publicus* and the *ager privatus*, and also defined the rights and obligations of the Vitirii with respect to Genua. The sentence contained also a provision to the effect that the litigants should again have recourse to the same arbitral tribunal if differences of a similar kind afterwards arose between them.

Between
Juba and
Leptis Magna.

In a territorial dispute (49-47 B.C.) between Juba and Leptis Magna,³ situated on the greater Syrtis on the African coast, a decision was delivered adversely to the claims of Juba, king of Numidia.

Administrative
arbitrations.

Finally, as to the administrative arbitrations it may be said that they were of a more varied character than the preceding, though the controversies in the main arose out of the occupation of territory, and the payment of tribute. The position of the conflicting parties was different from that of the States concerned

¹ Ruggiero, pp. 290 *seq.*; *Corp. inscrip. Lat.* v. 3490 (i. 549).

² *Ibid.* pp. 291 *seq.*; *Corp. inscrip. Lat.* v. 7749 (i. 199).

³ *Ibid.* pp. 297 *seq.*—Cf. Caesar, *Bell. civ.* ii. 38.

in international and federal arbitrations. They were communities dependent on Rome, and therefore fell within the circle of her own interests. Respecting the political condition of the various peoples concerned in the three kinds of arbitration, the international examples involved independent States, the federal examples implied States that were dependent on Rome *de facto*, but not *de iure*, whilst the administrative cases related to cities in a state of dependence both *de facto* and *de iure*.

The dispute between Pergamum, in Asia Minor, and the Roman *publicani*¹ (122-120 B.C.) as to a tribute that had been imposed was settled by a consul or praetor, assisted by a council of senators.

Between Pergamum and Roman *publicani*.

The conflict between Oropus (on the eastern frontiers of Boeotia and Attica) and the Roman *publicani*² (73 B.C.) related to the interpretation of a decree of Sulla, conferring certain territory on the temple of Amphiaras in Oropus.

Between Oropus and Roman *publicani*.

These two examples will perhaps suffice, as we are but little concerned here with administrative arbitrations.³

¹ *Ibid.* pp. 300 *seq.*

² *Ibid.* pp. 313 *seq.*—Cf. T. Mommsen, *Der Rechtsstreit zwischen Oropos und den römischen Steuerpächtern* (in *Hermes*, Berlin, vol. xx. (1888) pp. 268-287).

³ Further instances are given in Ruggiero, pp. 321 *seq.*

CHAPTER XXII

WAR: GROUNDS—DECLARATION

Dangers of superficial comparison in historical inquiry.

It has been asserted and reiterated that the ancients lived amidst the ceaseless turmoil of war, that an interminable mutual hostility of nations was their normal and necessary condition, and that they held every alien to be essentially and inevitably an *ἐχθρός* or *hostis*, in the sense of a political or natural adversary. That there is some truth—indeed, a great deal—in these asseverations cannot be denied; that much unreasoning exaggeration is involved has, it is hoped, been made evident in the earlier chapters of the present work. And it has also been demonstrated how and to what extent fallacious conclusions, which vitiate the entire survey of the subject, are frequently arrived at from a too superficial consideration of ancient phraseology, even of the very expressions *ἐχθρός* and *hostis*, and the like. It has been shown, moreover, that a state of war was not invariably and of necessity implied in the absence of express compacts establishing peaceful relationships between these or those communities. In tracing the development of international law, as in that of other branches of knowledge, there is manifested too frequently the dangerous tendency in ardent eulogists of our modern civilization to vilify and misrepresent—unwittingly though it may be—ancient conceptions and attainments. There is, of course, the contrary error of inordinately extolling antiquity to the disadvantage of the modern age. In the interests of a true synthesis of historical knowledge, it behoves inquirers to give each

epoch its due, to institute comparisons fairly and dispassionately, and not to allow their prepossessions or innate preferences to seduce their reason and judicial sense.

Now it was not at all considered by the ancient peoples that war was their normal condition. It was admittedly their frequent condition; but, at least amongst the Greeks and the Romans, certain clearly defined causes were recognized as occasioning legitimate war, that is, war in the regular, political acceptation of the term. And in the absence of these causes, to engage in warfare was conceived to be irregular, and forbidden by law and religion alike, and punishable by the gods; so that in these circumstances both the divine sanction and the positive exerted a deterrent influence.

War was not the normal condition.

Here and there in the ancient writings we find, no doubt, expressions relating to the necessity, the inevitability of war. But such statements do not literally represent the customary, universal practice; they are rather, on the one hand, the outcome of a desire to justify these or those proceedings, which were impliedly recognized to be extraordinary and not representative of the usual conduct of peoples or individuals, or they are, on the other hand, a philosophical generalization in reference to the manifestations of life and nature. Thus Heraclitus designates war the mother of all things, πόλεμος ματὴρ πάντων, in the sense of its being the fundamental principle of all change, all development. And so Cleinias, at the beginning of Plato's *Laws*, addressing the Athenian on the subject of Cretan institutions, and on the assumption that strife is inevitable for the attaining of political exclusiveness and national self-completeness, says: "... In reality every city is in a natural state of war with every other, not indeed proclaimed by heralds, but perpetual."¹

Different senses of war.

And yet just as warfare was often resorted to in

¹ Plato, *Laws*, i. 626: τῷ δ' ἔργῳ πάσαις πρὸς πάσας τὰς πόλεις ἀεὶ πόλεμον ἀκήρυκτον κατὰ φύσιν εἶναι. . . .

order to ensure such political and natural separateness, it tended, at the same time, to destroy exclusiveness, and what at first appeared to be ineradicable alienage. War was the means of bringing about a *rapprochement* between nations, between which, under ordinary circumstances, no pacific relationships existed. Thus before the Medic wars, the Hellenic races scarcely knew of the very existence of the Persians; after their wars commercial intercourse commenced between them. In early society and civilization warfare and all-absorbing militarism were unavoidable. In tribal life, and in the earlier stages of national life, the struggle for material existence is more manifest, its necessity is more fundamental; there is, moreover, a constant conflict between self-sufficiency and self-expansion. And so peace becomes impossible. As Leist remarks, the history of the ascent of civilization is at the same time the history of military development; for it has not been given to mankind to live in a condition of perpetual peace.¹ This principle we find recognized in the political and philosophical speculations of early writers, who expatiate on the immanence and ubiquitous character of strife. And so we find also modern writers erroneously concluding from these theoretical generalizations that war was the normal political condition of the ancient world.

Ancient religions—their influence.

The religions of antiquity now make for war, now for peace. Every nation considered that it possessed the only true religion,—and consequently showed a contempt for foreign cults, for the aliens who practised them, and for their territory and surroundings, which were regarded as unclean and accursed. Thus the Hebrews had a ‘jealous God’ who, whilst being the creator of the entire world, made them his specially ‘chosen race.’ It was thought a great calamity to be buried in a foreign country; hence, the remains of Jacob

¹ B. W. Leist, *Græco-italische Rechtsgeschichte*, p. 430: “Die Geschichte der steigenden Civilisation ist zugleich die der steigenden militärischen Ausbildung. Es ist der Menschheit nicht gegeben in stetem Frieden dahinzuleben.”

and Joseph were to be transferred from Egyptian soil to the more sacred, and therefore more acceptable, Canaan.¹ Similarly, on the destruction of Jerusalem by Titus, the conquered preferred death to leaving their native land.² The Egyptians jealously preserved their mysteries and religious initiations from alien contact. In the classification of living creatures, the Hindoos consigned aliens to a lower position than that of horses and elephants. The Zarathustrian theology of the Persians was based on the conception of the eternal conflict between Ormuzd, the god of light, and Ahriman, the god of darkness and evil; and with the latter they associated foreign peoples. A similar attitude of exclusiveness and opposition is more or less found in the case of the Babylonians, the Assyrians, and the Phoenicians, who all apotheosized brute force.

And in all this hostility, in all the warfare of the ancient communities, their respective gods necessarily participated; and the attitude of the tutelary deities was very often a reflex of that of their votaries. It was not justice, but national passion, as Laurent says, which animated the gods in the conflict, for example, between the Greeks and the Trojans,—“ce n'est pas la justice, mais la passion qui les pousse à favoriser les Grecs ou les Troyens.”³ The armies engaged in the combat as much to protect their gods as to deliver their country; and the gods were conceived likewise to take part in the hostilities, to assist and defend the nations they watched over, and to share in the work of destruction. Thus Virgil represents the gods in their anger overthrowing Troy—

“ . . . divom inclementia, divom,
has evertit opes sternitque a culmine Troiam.”⁴

and Neptune with his great trident shaking the walls

¹ *Gen.* xlvii. 29, 30; l. 24.

² *Tacit. Hist.* v. 13.

³ F. Laurent, *Hist. du dr. des gens*, vol. ii. p. 36.

⁴ *Aen.* ii. 602-3.

and foundations out of their places, and utterly destroying the city—

“Neptunus muros magnoque emota tridenti
fundamenta quatit totamque a sedibus urbem
eruit.”¹

The notion of the gods being present and applauding distinguished deeds of courage instigated the contending forces to perform acts of extraordinary valour and fury. “On se bat des deux côtés avec cet acharnement sauvage qui donne la pensée qu'on a des dieux pour soi et qu'on combat contre ces dieux étrangers.”² And the will of the gods, quite as much as the skill and the valour of the combatants, was thought to decide the destiny of battles. Thus Pausanias says that before the Spartans transgressed in the Messenian war by bringing about the treachery of Aristocrates the Arcadian, battles were decided by valour, and the will of God.³ And just as nations struggled amongst themselves for territorial aggrandizement, so the gods in their appropriation of various localities⁴ sometimes fell into disagreement with each other. Thus we hear of a conflict between Poseidon and Athena as to the possession of Athens,⁵ and also of Aegina,⁶ between Poseidon and Helios as to Corinth,⁷ between Poseidon and Hera as to Argolis,⁸ and so on. If a city was conquered, it was universally believed that its own tutelary deities were vanquished with it. Virgil represents Juno as observing to Aeolus that the race

¹ *Aen.* ii. 610-612.

² Fustel de Coulanges, *La cité antique*, p. 242.

³ Pausan. iv. 17. 3 : πρὶν δὲ ἢ παρανομήσαι Λακεδαιμονίους εἰς τὸν Μεσσηνίων πόλεμον καὶ Ἀριστοκράτους τοῦ Ἀρκάδος τὴν προδοσίαν ἀρετῇ τε οἱ μαχόμενοι καὶ τύχαις ἐκ τοῦ θεοῦ διεκρίνοντο.

⁴ *Apollod.* iii. 14.

⁵ *Apollod.* iii. 14. 1.

⁶ Pausan. ii. 30. 6—Cf. *supra*, p. 129, as to arbitrations between gods.

⁷ *Ibid.* ii. 1. 6.—Cf. *supra*, p. 129.

⁸ *Ibid.* ii. 15. 5.—Cf. *supra*, p. 130.

she hated was sailing the Tyrrhene sea, and carrying Ilium and its conquered household gods into Italy :

“Gens inimica mihi Tyrrhenum navigat aequor,
Ilium in Italiam portans victosque penates.”¹

Still, there were unmistakable manifestations of a General
pacific
tendency. pacific tendency induced also, as was said above, by religion, as well as by the doctrines of philosophers, and, most of all, by the necessities of travel and commercial relationships. Philosophers, moralists, and prophets alike condemned bellicose proclivities and national devotion to hostile enterprise. In the east personages like Isaiah and Ezekiel, Buddha, Lao-Tze, Confucius, and Mencius, denounced wars. Thus Lao-Tze, the old Chinese sage, says in that remarkable book of aphorisms, the *Tao Teh King* (‘Treatise of the way and of virtue’): “He who with reason assists the master of mankind will not with arms strengthen the empire. Where armies are quartered, briars and thorns grow.” “The more weapons the people have, the more troubled is the State”; and of a similar character are many other utterances.

In Greece, too, a peaceful and humane movement is Pacific
movement in
Greece. clearly discernible. Ares (Mars) may be the god of slaughter, the destroyer of cities, the *πολίπορθος*; ² but Athena (Lat. Minerva) is the protectress of cities, *ἑρυσίπολις*,³—the goddess of war too, it may be, but tempered by prudence.⁴ She abhors the savage love of war of Ares, and defeats him.⁵ She intervenes to put an end to the conflicts between Ulysses and the wooers, and exhorts the men of Ithaca to hold their hands from fierce fighting that they may be parted quickly without bloodshed.⁶ Ultimately, she became a goddess of peace, *εἰρηνοφόρος*. Again, with regard to the martial Ares it is worthy of note that Homer makes Zeus address him

¹ *Aen.* i. 68-69.

² Hesiod, *Theog.* 936; Hom. *Iliad*, v. 333, etc.

³ *Iliad*, vi. 305.

⁴ *Iliad*, i. 206; x. 244.

⁵ *Iliad*, v. 840; xxi. 406.

⁶ *Odys.* xxiv. 539 *seq.*

as the most hateful of all the gods that dwell in Olympus—

ἔχθιστος δέ μοί ἐσσι θεῶν οἱ Ὀλυμπον ἔχουσιν.¹

From about the middle of the fifth century B.C. Εἰρήνη, the goddess of peace, daughter of Zeus and Themis (the goddess of justice), was worshipped at Athens.² Throughout the Homeric poems we find emphatic expressions of pacific desires and inclinations, in spite of the heroic clash of arms. War is everywhere considered a calamity. Large sections of people are shown to be devoted to the cultivation of peace.³ The Greeks and the Trojans alike rejoice in the settlement of their dispute by the less destructive single combat of Paris and Menelaus, and desire to return peacefully to their hearths and homes.⁴ On the shield of Achilles are depicted scenes from country life, by the side of representations of warlike episodes.⁵ Kings and princes, however ready they may be to exhibit their prowess in the fight, are none the less attached to the work in their fields.⁶

Growth of
cosmopoli-
tanism.

The growth of cosmopolitan conceptions fostered still further the desire for peace and harmony between peoples. In many quarters, the older ideas of a narrow, political exclusiveness gave way to much wider views. Socrates, as Plutarch relates, objected to be considered a mere Athenian or a Greek; he proclaimed himself a citizen of the world, . . . οὐκ Ἀθηναῖος, οὐδὲ Ἕλληγ, ἀλλὰ κόσμιος εἶναι.⁷ Similarly, Diogenes being asked of what country he was replied that he was a citizen of the world, . . . ἐρωτηθεὶς πόθεν εἶη, κοσμοπολίτης, ἔφη;⁸ and so

¹ *Iliad*, v. 890.

² Plut. *Cim.* 13.

³ *Odys.* viii. 246 *seq.*

⁴ *Iliad*, ii. 134 *seq.*, 283 *seq.*

⁵ *Iliad*, xviii. 550 *seq.*

⁶ *Iliad*, vi. 424; *Odys.* xxiv. 225 *seq.*; cf. xvi. 140.

⁷ Plut. *De exil.* 5.—The word κόσμιος is here obviously equivalent to κοσμοπολίτης.

⁸ Diog. Laert. *Diogen.* vi. 63.

Theodorus maintained that his country was the world, . . . εἶναι τε πατρίδα τὸν κόσμον.¹ Then, again, we find frequent alliances and confederations established for self-defence, for the maintenance of peace, for minimizing hostilities, and for the preservation of the balance of power. From various quarters came appeals from time to time for the laying down of arms. Thus Aristophanes supplicates the gods to abolish the arbitrament of the sword—

Protests
against war.

Ἡμεῖς τε γὰρ πολεμοῦντες οὐ κερδαίνομεν,²

as Hercules is made to say; and at the risk of banishment he opposed the wars of Pericles, declaring that peace almost at any price was a greater advantage than a hundred disastrous victories;—and so on with many other pronouncements to the same effect. In the *Laws* of Plato, Cleinias (as was mentioned above) declared that every city was in a natural state of war; but this is not Plato's own declaration. Even then, war is here not really taken in the political, international sense. Subsequently, however, the Athenian, whom Cleinias thanks for many luminous suggestions, maintains, in answer to the inquiry whether victory in civil war or reconciliation is the better,³ that war of any kind, either foreign or intestine, is not the best policy, and its necessity is to be deprecated; but that peace with one another and good-will are best.⁴ And the same doctrine is affirmed by Plato on other occasions.⁵ And so Aristotle says that the goal of war is peace, τέλος γὰρ . . . εἰρήνη μὲν πολέμου.⁶

Coming to historians like Thucydides and Polybius, we find them equally emphatic in their whole-hearted

Polybius'
advocacy of
peace.

¹ Diog. Laert. *Aristipp.* ii. 99. ² *Birds*, 1591; cf. *Lysist.* 1130 seq.

³ *Laws*, i. 628 B: . . . ἢ φιλίας τε καὶ εἰρήνης ὑπὸ διαλλαγῶν γενομένης οὕτω τοῖς ἔξωθεν πολεμίοις προσέχειν ἀνάγκη εἶναι τὸν νοῦν;

⁴ *Ibid.*: τό γε μὴν ἄριστον οὔτε ὁ πόλεμος οὔτε ἡ στάσις, ἀπευκτὸν δὲ τὸ δεηθῆναι τούτων, εἰρήνη δὲ πρὸς ἀλλήλους ἅμα καὶ φιλοφροσύνη.

⁵ Cf. *Laws*, vii. 803; viii. 829 A.

⁶ *Polit.* iv. 14.

advocacy of peace,—at least, so long as it be obtained with honour and justice. The main advantage to be derived from the prosecution of war, as Polybius claims, is the hope of subsequently establishing on a firmer basis the blessings of peace. To desist from war, and thus jeopardize or render impossible the securing of such pacific conditions, is alike a base and a disastrous policy. Thus, in reference to the oligarchical party of the Messenians who resolved not to make war against Philip, until, at least, Phigalia, a city on their frontier, was wrested from the Aetolians, Polybius thinks that this dilatory conduct showed great ignorance of their true interests. “I admit, indeed,” he says, “that war is a terrible thing; but it is less terrible than to submit to anything whatever in order to avoid it. For what is the meaning of our fine talk about equality of rights, freedom of speech, and liberty, if the one important thing is peace? We have no good word for the Thebans, because they shrunk from fighting for Greece, and chose from fear to side with the Persians—nor indeed for Pindar, who supported their inaction in the verses :

‘ A quiet haven for the ship of State
Should be the patriot’s aim,
And smiling peace to small and great
That brings no shame.’

For though his advice was for the moment acceptable, it was not long before it became manifest that his opinion was as mischievous as it was dishonourable. For peace, with justice and honour, is the noblest and most advantageous thing in the world; when joined with disgrace and contemptible cowardice, it is the basest and most disastrous.”¹

¹ Polyb. iv. 31 : ἐγὼ γὰρ φοβερὸν μὲν εἶναι φημι τὸν πόλεμον, οὐ μὴν οὕτω γε φοβερὸν ὥστε πᾶν ὑπομένειν χάριν τοῦ μὴ προσδέξασθαι πόλεμον, ἐπεὶ τί καὶ θρασύνομεν τὴν ἰσηγορίαν καὶ παρρησίαν καὶ τὸ τῆς ἐλευθερίας ὄνομα πάντες, εἰ μὴδὲν ἔσται προυργαίτερον τῆς εἰρήνης; οὐδὲ γὰρ Θηβαίους ἐπαινοῦμεν κατὰ τὰ Μηδικά, διότι τῶν ὑπὲρ τῆς Ἑλλάδος ἀποστάντες κινδύνων τὰ Περσῶν εἴλοντο διὰ τὸν

With this pronouncement of Polybius, whose philo-
sophic grasp of political conditions, understanding of
international relationships, and penetration into compli-
cated issues are ever apparent, may be compared the
observations of Thucydides, hardly less luminous on
broad questions of national policy. At the assembly
of the Peloponnesian allies at Sparta, 432 B.C., where
divers grievances were alleged against Athens, the
Corinthian envoys, addressing the representatives, ex-
horted them to vote for war: "Acknowledging, then,
allies, that there is no alternative, and that we are
advising you for the best, vote for war; and be not
afraid of the immediate danger, but fix your thoughts
on the durable peace which will follow. For by war
peace is assured, but to remain at peace when you should
be going to war may be often very dangerous. The
tyrant city which has been set up in Hellas is a standing
menace to all alike; she rules over some of us already,
and would fain rule over others. Let us attack and sub-
due her, that we may ourselves live safely for the future,
and deliver the Hellenes whom she has enslaved."¹

Appeals for
peace during
the
Peloponnesian
war.

At a previous meeting of the confederates in Sparta,
in the same year, Archidamus, the aged Lacedaemonian

φόβον, οὐδὲ Πίνδαρον τὸν συναποφηνάμενον αὐτοῖς ἄγειν τὴν ἡσυχίαν
διὰ τῶνδε τῶν ποιημάτων,

τὸ κοινόν τις ἀστῶν ἐν εὐδίᾳ τιθείς
ἔρευνασάτω μεγαλόνορος ἡσυχίας τὸ φαιδρὸν φάος.

δόξας γὰρ παραντίκα πιθανῶς εἰρηκέναι, μετ' οὐ πολὺ πάντων
αἰσχίστην εὐρέθη καὶ βλαβερωτάτην πεποιημένος ἀπόφασιν· εἰρήνη
γὰρ μετὰ μὲν τοῦ δικαίου καὶ πρέποντος κάλλιστόν ἐστι κτῆμα καὶ
λυσιτελέστατον, μετὰ δὲ κακίας ἢ δειλίας ἐπονειδίστου πάντων αἰσ-
χιστον καὶ βλαβερώτατον.

¹Thuc. i. 124: "ἀλλὰ νομίσαντες ἐς ἀνάγκην ἀφίχθαι, ὧ ἄνδρες
ξύμμαχοι, καὶ ἅμα τὰδε ἄριστα λέγεσθαι, ψηφίσασθε τὸν πόλεμον,
μὴ φοβηθέντες τὸ αὐτίκα δεινὸν, τῆς δ' ἀπ' αὐτοῦ διὰ πλείονος
εἰρήνης ἐπιθυμήσαντες· ἐκ πολέμου μὲν γὰρ εἰρήνην μᾶλλον βεβαι-
οῦται, ἀφ' ἡσυχίας δὲ μὴ πολεμήσει οὐχ ὁμοίως ἀκινδύνον. καὶ τὴν
καθεστηκυίαν ἐν τῇ Ἑλλάδι πόλιν τύραννον ἡγησάμενοι ἐπὶ πᾶσιν
ὁμοίως καθεστάναι, ὥστε τῶν μὲν ἤδη ἄρχειν τῶν δὲ διανοεῖσθαι,
παραστησώμεθα ἐπελθόντες, καὶ αὐτοὶ ἀκινδύνως τὸ λοιπὸν οἰκῶμεν,
καὶ τοὺς νῦν δεδουλωμένους Ἑλληνας ἐλευθερώσωμεν."

king, esteemed alike for his ability and his prudence, counselled the assembly to observe discretion, and not rashly to rush to arms. He had had, he observed, great experience of wars, and he was sure that such of his hearers as were advanced in years, and had experienced the ravages of warfare, would not, as men too often did, desire war because they had never known it, or in the belief that it was either a good or a safe proceeding,—*μήτε ἀγαθὸν καὶ ἀσφαλές*. . . .¹

Polybius on
peace.

Polybius, again, states that when the Arcadians in the course of time advanced a claim for Lasion and the whole district of Pisa, being compelled to defend their territory and change their habits of life, they neglected to recover from the Greeks their ancient and ancestral immunity from pillage, but were content to remain just as they were. "This, in my opinion," he comments, "was a short-sighted policy. For peace is a thing we all desire, and are willing to submit to anything to obtain; it is the only one of our so-called blessings that no one questions. If, then, there are people who, having the opportunity of obtaining it, with justice and honour, from the Greeks, without question and for perpetuity, neglect to do so, or regard other objects as of superior importance to it, must we not look upon them as undoubtedly blind to their true interests?"²

Thucydides.

Polybius' glorification of an honourable peace may again be compared with the deliverance of his predecessor, Thucydides. Thus Hermocrates, the Syracusan, addressing the congress of Sicilian States, 424 B.C., urges them, in a speech marked by persuasive eloquence and political wisdom, to make peace amongst themselves, as

¹ Thuc. i. 80.

² Polyb. iv. 74: . . . οὐκ ὀρθῶς κατὰ γε τὴν ἐμὴν περὶ τοῦ μέλλοντος ποιούμενοι πρόνοιαν· εἰ γάρ, ἥς πάντες εὐχόμεθα τοῖς θεοῖς τυχεῖν, καὶ πᾶν ὑπομένομεν ἱμείροντες αὐτῆς μετασχεῖν, καὶ μόνον τοῦτο τῶν νομιζομένων ἀγαθῶν ἀναμφισβήτητόν ἐστι παρ' ἀνθρώποις, λέγω δὴ τὴν εἰρήνην, ταύτην δυνάμενοί τινες μετὰ τοῦ δικαίου καὶ καθήκοντος παρὰ τῶν Ἑλλήνων εἰς πάντα τὸν χρόνον ἀδήριτον κτᾶσθαι παρολιγωροῦσιν ἢ προυργιαίτερόν τι ποιοῦνται τούτου, πῶς οὐκ ἂν ὁμολογομένους ἀγνοεῖν δόξαιεν;

the only means of keeping the Athenians out of Sicily. "And why," asked he, "if peace is acknowledged by all to be the greatest of blessings, should we not make peace among ourselves? Whatever good or evil is the portion of any of us, is not peace more likely than war to preserve the one and alleviate the other? And has not peace honours and glories of her own unattended by the dangers of war?"¹

Euripides likewise makes Cassandra say how inconsistent with wisdom is the prosecution of war : Other appeals for peace.

φεύγειν μὲν οὖν χρὴ πόλεμον, ὅστις εὖ φρονεῖ·
εἰ δ' ἔς τὸδ' ἔλθοι, στέφανος οὐκ αἰσχρὸς πόλει
καλῶς ὀλέσθαι, μὴ καλῶς δὲ δυσκλέες.²

(It behoves him therefore, whosoever is wise, to avoid war ; but if it come to this, it is no crown of dishonour to die nobly for one's city ; but to die ignobly is shameful.)

Once more, Polybius relates that the Rhodian legate, in his plea for union in Greece urged before an assembly of Aetolians at Heraclea, 207 B.C., argued thus : "For if you were carrying on a war which, though profitless—and most wars are that—was yet glorious from the motive which prompted it, and the reputation likely to accrue from it, you might be pardoned perhaps for a fixed determination to continue it ; but if it is a war of the most signal infamy, which can bring you nothing but discredit and obloquy,—does not such an undertaking claim considerable hesitation on your part?"³

¹ Thuc. iv. 62 : τὴν δὲ ὑπὸ πάντων ὁμολογουμένην ἄριστον εἶναι εἰρήνην πῶς οὐ χρὴ καὶ ἐν ἡμῖν αὐτοῖς ποιήσασθαι ; ἢ δοκεῖτε, εἴ τί τι ἔστιν ἀγαθὸν ἢ εἴ τι τὰ ἐναντία, οὐκ ἡσυχία μᾶλλον ἢ πόλεμος τὸ μὲν παύσαι ἂν ἐκατέρῳ τὸ δὲ ξυνδιασώσαι, καὶ τὰς τιμὰς καὶ λαμπρότητας ἀκινδυνότερας ἔχειν τὴν εἰρήνην, ἄλλα τε ὅσα ἐν μίγκει λόγων ἂν τις διέλθοι ὡσπερ περὶ τοῦ πολεμεῖν ;

² *Troad.* 400-402.

³ Polyb. xi. 4 : καὶ γὰρ εἰ κατὰ τινα τύχην ἐπολεμεῖτε πόλεμον ἀλυσιτελῆ μὲν, ἐπειδὴ παντὶ πολέμῳ τοῦτο παρέπεται κατὰ τὸ πλείστον, ἔνδοξον δὲ καὶ κατὰ τὴν ἐξ ἀρχῆς ὑπόθεσιν καὶ κατὰ τὴν τῶν ἀποβαινόντων ἐπιγραφὴν, ἴσως ἂν τις ὑμῖν ἔσχε συγγνώμην φιλοτίμως διακειμένους. εἰ δὲ πάντων αἰσχιστον καὶ πολλῆς ἀδοξίας πλήρη καὶ βλασφημίας, ἄρ' οὐ μεγάλης προσδέεται τὰ πράγματα ἐπιστάσεως ;

And similar sentiments are expressed by Xenophon as to peace being in the estimation of mankind the greatest good.¹

Denunciations
of war not rare
in Rome.

As in the case of Greek writers, so amongst the Romans we not infrequently find denunciations of war, and the insistence of the superiority of peace to war. Thus Silius Italicus emphasizes that peace is the best of all things given to mankind, and that one peace is better than innumerable triumphs—

“Pax optima rerum
quas homini novisse datum est ; pax una triumphis
innumeris potior.”²

And so Sallust says that the wise wage war for the sake of peace,—“sapientes pacis causa bellum gerunt.”³ Expressions to the same effect are found in the writings of others.

Justice claimed
for wars.

Now if, judging from the warlike activity of the Greek and Roman peoples, they do not appear to have invariably preferred peace to war, nor to have always adopted the wise counsel of statesmen and philosophers, they, at all events, usually claimed justice for their wars, and were, if necessary, prepared to demonstrate that their proceedings were legitimate, and in accordance with accepted principles and general opinion, in obedience to Hellenic law, the νόμιμα Ἑλλήνων, or the law of nations, the *ius gentium*, as the case may be. And so we find that the Greeks first, then the Romans—more particularly the latter with their specialized fetial law—did much towards regularizing and humanizing the conduct of hostilities, that they redeemed the arbitrament of the sword from the customary excesses and brutalities, from the blood-thirsty rapacity of the oriental and other nations, whether predecessors or contemporaries, and

¹ Xenoph. *Hieron.* ii. 7 : αὐτίκα γὰρ εἰ μὲν εἰρήνη δοκεῖ μέγα ἀγαθὸν τοῖς ἀνθρώποις εἶναι, ταύτης ἐλάχιστον τοῖς τυράννοις μέτεστιν· εἰ δὲ πόλεμος μέγα κακὸν, τούτου πλείστον μέρος οἱ τύραννοι μετέχουσιν.

² *Punica*, xi. 592.

³ *Oratio ad Caes.* i.

that they laid the solid foundations of an international law of war. ✓

The most important matters comprised in this law of war relate to the recognition of certain valid grounds for commencing hostilities ; to the declaration of war, and the necessary formal preliminaries ; various relaxations, including the granting of safe-conducts, the right of asylum, and the claims of suppliants ; the right of the conqueror, and the occupation of enemy territory, and seizure of booty ; the protection of temples, graves, and sacred objects generally ; the inviolability of certain individuals ; the burial of the dead ; the conclusion of truces and armistices ; prisoners of war, their ransom and exchange ; spies ; hostages ; elements of neutralization and neutrality ; contraband ; in maritime war, questions of commercial intercourse, blockade, embargo ; and, finally, the formal and solemn conclusion of peace.

Chief matters
in the law of
war.

It is by no means asserted or implied that in regard to all these questions an elaborate scientific code was in operation, or even in existence. But, it were no less than blind unreason and obstinate prejudice to condemn the rules that prevailed because, as a body, they were inferior to the systematized structure of provisions of modern States.

Now we may proceed to consider the various grounds for war.

Grounds for
war.

Even in the heroic epoch in Greece, no war was undertaken without the belligerents' alleging a definite cause considered by them as a valid and sufficient justification therefor, and without their previously demanding reparation for injuries done or claims unsatisfied. The Romans invariably took scrupulous precautions to make sure that any particular war they were about to undertake was a 'just war,' a *iustum bellum*. *Iustum* is here understood in the sense of the war being commenced and prosecuted in accordance with the necessary formalities required by the positive

Regular
preliminaries
to make the
war a *iustum
bellum*.

law.¹ Sometimes, also, this term is employed in reference to the justifiableness or operativeness of the alleged grounds, which had to be investigated and pronounced upon judicially by the fetials. Further, not only was a war required to be *iustum*, but also to be *pium*, that is in accordance with the sanctions of religion, and the express or implied commands of the gods.² It has sometimes been held that *iustum* does not really refer to the formality of the declaration (*indictio*), but refers to the alleged *causa*; and that *pium*, in contradistinction to *iustum*, implies merely the ceremonies and formalities, and that it is practically equivalent to *legitimum*.³ But the above considerations, together with the subsequent examination of the matters relating to the law of war, and especially the treatment of the fetial procedure,⁴ will show that such a view is fundamentally erroneous.

Demand for
satisfaction
before
declaring war.

In every case the Romans, before declaring war, despatched envoys to the foreign countries, against which they had a grievance, with a formal demand in the name of the Roman government and people to make amends for any injuries inflicted, and to surrender the offending citizens. And only in case of refusal was a declaration of war pronounced. So that it may

¹Cf. Baviera, *Il dir. intern. dei Rom.*, *loc. cit.* p. 494: "L'appellativo *iustus* nel linguaggio giuridico romano sta ad indicare che un rapporto o un atto è conforme al diritto positivo."

²Cf. the definition of 'iustum bellum' given by Osenbrüggen, *De jure belli et pacis Rom.* p. 23: "iustum bellum est quod suscipitur omnibus ex ordine perpetratis, quæ usus et ritus postularent, bellum igitur iusto more inceptum."

³Cf. Müller-Jochmus, *Gesch. des Völkerr. im Alter.* p. 155: "Das justum bezog sich nicht . . . auf die Formalität der *indictio*, sondern auf die *causa*, insofern nach der *aequitas* des Krieges gefragt wurde, während das in seinem Gegensatz stehende *pium* nur auf das Ceremoniell ging und etwa dem *legitimum* entsprach. Gingen beide Worte auf die Förmlichkeiten, so musste es auffallen, dass sie so oft nutzlos neben einander stehen, schon aus der Rede des Fetialen, 'puro pioque duello,' ergibt sich aber der Sinn des justum, dass offenbar die Stelle des purum sonst vertritt."

⁴See *infra*, chap. xxvi.

be said, especially in reference to the earlier portion of Roman history, that the criterion of the legitimacy of any particular war is represented in some such expression as this—"quum legatis totiens repetentibus res nec reddi nec satisfieri aequum censuissent"¹ (as ambassadors had so often demanded restitution, and they [*i.e.* the offending State] had not thought proper to make either reparation or apology). Cicero says that the laws and customs of war are religiously recorded in the fetial code of the Roman people, in pursuance of which no war is deemed to be 'just' or legitimate, unless it is duly declared after a formal demand for satisfaction has been made.² Again, he points out that Tullius Hostilius promulgated a law regulating wars which was to the effect, that to be just in itself the commencement must be sanctioned by the religious ceremonies of the fetial magistrates, and that every war not so declared should be regarded as unjust and impious.³

The fetial proceedings had not at all an exclusively religious character (as the majority of writers appear to imagine). They possessed also—indeed, well-nigh equally—a political and a judicial nature,—in the one case, for example, when the fetials officiated as ambassadors for the purpose of setting forth their country's complaints, in the other, when they delivered their opinion respecting the validity or inadequacy of the alleged cause of war.

Hence, one may readily understand the proneness of patriotic writers like Livy to belaud constantly (of Roman wars claimed to be just. course, more or less extravagantly) the justice of their

¹ Liv. xxxvi. 3,—in reference to the Aetolians.

² Cic. *De off.* i. 11. 36: "Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est. Ex quo intelligi potest nullum bellum esse iustum nisi quod aut rebus repetitis geratur aut denunciatum ante sit et indictum."

³ Cic. *De Repub.* ii. 17: "Sanxit fetiali religione, ut omne bellum, quod denunciatum indictumque non esset, id iniustum esse atque impium iudicaretur."

countrymen's wars. Thus, in 169 B.C. Astymedes, a Rhodian envoy, is represented as having addressed the Roman senate thus: "... You are in truth the same Romans who boast that your wars are successful because they are just, who glory not so much in the issue of them, in that you conquer, as in the commencement of them, in that you do not undertake them without a just cause."¹ To the Romans, with their incessant exaltation of 'justice' and formality, the conception of conducting war 'more latronum,' in the manner of brigands, was repugnant. Just as their municipal law had its *interpellatio*, its regular institution of proceedings, so their law of war had its preliminary *repetitio rerum*, or *clarigatio*, demand for redress. And, as has been pointed out in the earlier chapters, in the various belligerent relationships with all duly organized States Rome recognized equality and reciprocity of treatment; as, for example, in matters relating to the conclusion by generals of *sponsiones* and truces (*indutiae*), the concession of safe-conducts, the treatment of prisoners, the reduction of captives to slavery, questions of postliminium, acquisition of booty, occupation of territory, and the like.

The most usual grounds considered sufficient to justify the commencement of warlike operations were—violation of a treaty, desertion from an alliance or confederation, offences committed against allies, violation of the sanctity of ambassadors, unjustifiable refusal to receive embassies, denial of neutrality, infringement of territorial rights ('*incursio hostilis*'), desecration of sacred places, unjust refusal of *deditio*, or extradition, of a person or persons guilty of these and other offences.

The infringement of the substantive provisions of a formal treaty or of a truce or armistice furnished a just ground for war, or for a more vigorous renewal of it,

¹ Liv. xlv. 22: "Vos estis Romani, qui ideo felicia bella vestra esse, quia iusta sint, prae vobis fertis; nec tam exitu eorum, quod vincatis quam principiis, quod non sine causa suscipiatis, gloriamini."

6 The various causes of war.

Breach of treaty.

as the case may be. A war undertaken under these circumstances was regarded as a measure of punishment and retaliation, sanctioned both by positive and by divine law. Any one instigating or offering help to the violators of such engagements was considered guilty equally with them. Thus, the Carthaginians having taken possession of some transports under Cn. Octavius, that had been wrecked in the Bay of Carthage—a deliberate act on their part in contravention of a truce that had been made, 203 B.C.—Scipio despatched Lucius Sergius, Lucius Baebius, and Lucius Fabius to Carthage to remonstrate. After having had an audience of the senate there, they were introduced before the popular assembly, which they are represented as having addressed in these terms: “And what arguments will you use to move the pity of the victors for your misfortunes? You must needs expect to be debarred from all hope of mercy from gods and men alike by your perfidy and folly.”¹

If a State abandoned without just cause and reason an alliance or a confederacy, the other allies or confederates claimed full justification to commence hostilities against the deserter. The fundamental principle involved was the violation of good faith, which had previously been guaranteed in all solemnity by the taking of the oath, and which was also sanctioned by the sacred law. Hence such conduct likewise brought down on the heads of the culprits the inevitable retribution of the gods. Thus in 359 B.C. when L. Annius, the Latin praetor, had uttered certain expressions in contempt of the divinity of the Roman Jupiter, in view of the frequent appeals made by the consuls to the gods as witnesses to their treaties, he was, as the story relates, overtaken by a fatal calamity; and, also, a terrific storm burst forth in the heavens during the invocation

Defection
from an
alliance or
league.

¹ Polyb. xv. 1: ποίοις δὲ χρώμενοι λόγοις τὸν ἐκ τῶν κρατούντων ἔλεον ἐπισπάσασθε πρὸς τὰς ἑαυτῶν συμφοράς; πάσης εἰκὸς ὑμᾶς ἐλπίδος ἀποκλεισθήσεσθαι καὶ παρὰ θεῶν καὶ παρ' ἀνθρώπων διὰ τὴν ἀθεσίαν καὶ τὴν ἀβουλίαν.

made in reference to the violated compacts.¹ After the Gaulish invasion, the treaty of Spurius Cassius with the Latins and the Hernicans was for some time either imperfectly observed or deliberately violated; and of the various States that began to adopt a hostile attitude towards Rome, Praeneste was the most conspicuous. When the Praenestines were drawn up in the field and in view of the Romans, 379 B.C., the dictator, Titus Quinctius Cincinnatus, says Livy, invoked the aid of the gods in these words: "Ye gods, witnesses of the treaty, assist us, and exact the penalty, due for yourselves having been violated, and for us who have been deceived through the appeal made to your divinity."² In 340 B.C., when Rome and Latium were in alliance, and jointly pressing upon the Volscians, the Campanians solicited the assistance of the former to defend them against the aggressions of the Samnites. At the direction of the senate, the consul replied: "Campanians, the senate considers you deserving of aid. But it is meet that friendship be so established with you that no prior friendship and alliance be violated. The Samnites are united to us by compact; therefore we are bound to refuse you arms against the Samnites, for to assist you would be a violation of duty, on the one hand, to the gods, and, on the other, to men. But we will, as divine law and human law require, despatch ambassadors to our allies and friends to entreat them that no violence be committed against you."³ In the

¹ Liv. viii. 6: "... exanimatum auctores quoniam non omnes sunt, mihi quoque in incerto relictum sit, sicut inter foederum ruptorum testationem ingenti fragore caeli procellam effusam; nam et vera esse et apte ad repraesentandam iram deum ficta possunt."

² Liv. vi. 29: "Adeste dii testes foederis et expetite poenas debitas simul vobis violatis nobisque per vestrum numen deceptis."

³ Liv. vii. 31: "auxilio vos, Campani, dignos censet senatus, sed ita vobiscum amicitiam institui par est, ne qua vetustior amicitia ac societas violetur. Samnites nobiscum foedere iuncti sunt. itaque arma deos prius quam homines violatura adversus Samnites vobis negamus; legatos, sicut fas iusque est, ad socios atque amicos precatum mittemus, ne qua vobis vis fiat."

great war for the conquest of central Italy, the Romans crushed the Samnites in their fourth campaign, 322 B.C., so completely that the latter observed: "It is not at all to be wondered at, if in an impious war, commenced in violation of a treaty, when the gods were, with justice, more incensed against them than were men, they succeeded in none of their undertakings. That war must accordingly be expiated and atoned for with a heavy penalty."¹ The thirty ambassadors despatched to Scipio by Carthage, 202 B.C., were severely rebuked for their perfidy; and it was pointed out to them that the numerous disasters they had suffered ought to teach them to believe in the existence of the gods, and in the obligation engendered by a solemn oath.²

A serious injury wilfully committed against an ally was usually considered as an offence against that ally's confederates, and so a just ground for war on the part of the latter. Penelope rebuking Antinous for compassing the death of Telemachus, says: "Do you not remember how your father fled to this house in fear of the people, who were incensed against him for having joined some Taphian pirates, and plundered the Thesprotians, who were at peace with us?"³ In 340 B.C. envoys from Setia and Norba having come to Rome to announce the revolt of the Privernians and to complain of the damage inflicted by them, Caius Plautius at once marched against

Offence
committed
against an ally.

¹ Liv. viii. 39: "minime id mirum esse, si impio bello et contra foedus suscepto, infestioribus merito deis quam hominibus, nihil prospere agerent; expiandum id bellum magna mercede luendumque esse."—Cf. Liv. x. 39.

² Liv. xxx. 37: "revocatis legatis et cum multa castigatione perfidiae monitis, ut tot cladibus edocti tandem deos et iusiurandum esse crederent."

³ *Odys.* xvi. 425-428:

Ἦ οὐκ οἶσθ', ὅτε δεῦρο πατὴρ τῆς ἕκετο φεύγων,
δῆμον ὑποδδείσας; δὴ γὰρ κεχολώατο λίην,
οὐνεκα ληϊστῆρσιν ἐπιστόμενος Ταφίοισιν
ἦκαχε Θεσπρωτούς· οἱ δ' ἡμῖν ἄρθμοι ἦσαν.

Privernum.¹ In 300 B.C., Rome, having made a compact with the Lucanians, sent envoys to the Samnites to demand their withdrawal from the territory of the Roman allies.² When the province of Macedonia fell by lot to Publius Sulpicius (202 B.C.), he proposed to the people that on account of the injuries and hostilities committed against the Athenians, who were allies of Rome, they should proclaim war against Philip.³ In the following year the Athenians having put to death two Acarnanians for straying into their mysteries, the countrymen of the victims appealed for help to Philip who, as they were his faithful allies, permitted them to levy troops in Macedonia; and with these reinforcements they invaded Attica without a formal declaration of war. Accordingly, Athenian envoys were sent to Rome to report the attack made by Philip on an ancient ally of the Romans; thereupon, the senate, in the following year, proposed to the comitia a declaration of war in consequence of this attack on a State in alliance with Rome.⁴

Breach of
neutrality.

The furnishing of assistance to the enemy belligerent, or any other flagrant act of violation of neutrality, was naturally a cause of war. Thus Demetrius, during his war against the Athenians, captured a ship which was loaded with wheat bound for Athens, and hanged the captain and pilot,—a measure, says Plutarch, which terrified other merchants so much that they avoided Athens, and a terrible famine followed there.⁵ But

¹ Liv. viii. 1: "... cum Setini Norbanique Romam nuntii defectionis Privernatum cum querimoniis acceptae cladis venerunt..." —Cf. Liv. viii. 2, as to the Samnites requesting Rome that they should be allowed to wage war against the Sidicinians, who were never allies of the Roman people.

² Liv. x. 12: "fetiales missi qui Samnitum decedere agro sociorum ac deducere exercitum finibus Lucanis iuberent."

³ Liv. xxxi. 6: "... rogationem promulgavit, vellent iuberent Philippo regi Macedonibusque, qui sub regno eius essent, ob iniurias armaque illata sociis populi Romani bellum indici."

⁴ Cf. Liv. xxx. 42.

⁵ Plut. *Demet.* 33.

better examples of this principle may be cited. In 356 B.C. the Faliscans having aided the Tarquinians who were at war with Rome were likewise considered enemies of the Roman people.¹ Again, in 201 B.C. the Macedonian ambassadors endeavouring to assume an evasive attitude, as Livy says, were at once informed that the convention had been doubly violated by Philip, both by his insults and hostilities to the allies of the Roman people, and by his aiding their enemies with auxiliaries and money,—“*dupliciter ab eo foedus violatum, et quod sociis populi Romani iniurias fecerit ac bello armisque laccessiverit, et quod hostes auxiliis et pecunia iuverit.*”² Diodorus relates that the Carthaginians having landed in Sicily marched against Agrigentum; but before this they had despatched an embassy to the Agrigentines, to invite them to unite with them as confederates, and, if they did not approve of that course, that they should, at least, remain neutral and enter into a compact of peace and amity with the Carthaginians. When both these offers were rejected, the latter forthwith pressed on the siege with all vigour.³

A further ground for war, as involving a serious infringement of a well-established law amongst the ancient nations, was the violation of the sacred character of ambassadors.⁴ Such phrases as ‘*legatus iure gentium tutus,*’ or equivalent expressions, emphasizing the protection afforded to diplomatic envoys in virtue of the law of nations, are frequently used by Roman writers. Thus Livy employs it in reference to Annius

Offences
against
ambassadors.

¹ Liv. vii. 16: “*Falisci hostes exorti duplici crimine, quod et cum Tarquiniensibus iuventus eorum militaverat. . .*”

² Liv. xxx. 42.

³ Diod. xiii. 85: *καὶ πρῶτον μὲν ἀπέστειλαν πρέσβεις πρὸς τοὺς Ἀκραγαντίνους, ἀξιούντες μάλιστα μὲν συμμαχεῖν αὐτοῖς, εἰ δὲ μή γε ἡσυχίαν ἔχειν καὶ φίλους εἶναι Καρχηδονίοις ἐν εἰρήνῃ μένοντας. οὐ προσδεξαμένων δὲ τῶν ἐν τῇ πόλει τοὺς λόγους, εὐθὺς τὰ τῆς πολιορκίας ἐνηργεῖτο.*

⁴ See vol. i. pp. 328 *seq.*

who, having obtained an audience of the senate in the Capitol, addressed Titus Manlius, and the senators, as though he had taken the Capitol by arms as a victor, and not as 'an ambassador protected by the law of nations.'¹ The Veientians, by order of their king, Tolumnius, had put to death four Roman ambassadors who were sent to them to inquire about the defection of Fidenae, a Roman colony, to the Veientians. Hostilities were therefore commenced by Rome, and in the course of a battle in 436 B.C., Aulus Cornelius Cossus, a tribune of the soldiers, perceiving the approach of Tolumnius, rushed forth towards him with the exclamation: "Is this the breaker of human treaties, the violator of the law of nations? This victim I will now slay—if it is the wish of the gods that there should be anything sacred on earth—and I will offer him up to the shades of the ambassadors."² Later, war was again made on the Veientians for their insolent treatment of a Roman embassy, that had been despatched to set forth certain grievances and demand restitution.³ Again, in 300 B.C., by the vote of the senate and resolution of the assembly of the people, war was declared against the Samnites owing to their threats to Roman envoys.⁴

On the other hand, a refusal to surrender an ambassador who took part in hostilities and thus violated his neutrality, which was enjoined by the law of nations, furnished a valid ground for war.⁵

¹ Liv. viii. 5.

² Liv. iv. 19: "hicine est ruptor foederis humani violatorque gentium iuris? iam ego hanc mactatam victimam, si modo sancti quicquam in terris esse dii volunt, legatorum manibus dabo."

³ Liv. iv. 58: "Veiens bellum motum ob superbum responsum Veientis senatus, qui legatis repetentibus res, ni facessero propere urbe finibusque, daturus quod Lars Tolumnius dedisset, responderi iussit."

⁴ Liv. x. 12: "quibus obviam missi ab Samnitibus qui denuntiarent, si quod adissent in Samnio concilium, haud inviolatos abituros. haec postquam audita sunt Romae, bellum Samnitibus et patres censuerunt et populus iussit."

⁵ Cf. Liv. vi. 1; and see vol. i. pp. 341 *seq.*

An unjustifiable rejection of an embassy was likewise held to be a just cause for hostilities on the part of the injured State.¹

Another obvious ground was the violation of territorial rights, 'incurtio hostilis.' More particularly in earlier times incursions were not infrequently made into neighbouring territories, for the purpose of committing plunder, *e.g.* theft of flocks, capture of slaves, etc. And if due redress was refused, on a formal demand having been made, the injured community claimed the right to make war on the offending people, on the ground that the latter had expressly or tacitly sanctioned the depredations. Thus in 487 B.C., after Caius Aquilius and Titus Sicinius entered on the consulship, the senate sent ambassadors to the Hernici to demand of them, as of their friends and allies, such reparation as they were entitled to by their treaties; for the commonwealth had been injured by them at the time of the invasion of the Volsci and the Aequi, by the robberies they had committed and the incursions they had made upon that portion of the Roman territory which adjoined theirs.² The Volsinians having, along with the Salpinians, made an unprovoked incursion into Roman territory, war was declared against both nations,—"ob quae Volsinienses Salpinatibus adiunctis superbia elati ultro agros Romanos incursavere. bellum inde duobus populis indictum."³ In 376 B.C. hostilities were directed against the Volscians on account of their incursions, which had been conducted after the fashion of bandits, 'more latrocinii.'⁴ In 352 B.C. the land

Hostile
incursion—
violation of
territorial
rights.

¹ Cf. vol. i. p. 309.

² Dion. Hal. viii. 64: ... πρῶτον ἐψηφίσατο πρεσβείαν πέμψαι πρὸς Ἑρμικᾶς αἰτήσουσαν, ὡς παρὰ φίλων τε καὶ ἐνσπόνδων, δίκας νομίμους ἠδίκτο γὰρ ἢ πόλις ὑπ' αὐτῶν κατὰ τὴν Οὐλοῦσκων τε καὶ Αἰκανῶν ἐπιστρατεῖαν ληστείας τε καὶ καταδρομαῖς τῆς ὁμορούσης αὐτοῖς γῆς.

³ Liv. v. 31.

⁴ Liv. vi. 31: "populatio non illae vagae similis, quam Vulscus latrocinii more, discordiae hostium fretus et virtutem metuens, per

around the Roman Salinae (the salt-works that had been established by Ancus Martius near Rome) having been depopulated and plundered by the Caeritians, Titus Manlius, who had been nominated dictator, declared war against them by the order of the people and the sanction of the senate.¹ Similarly, in the case of the consul Marcus Valerius against the Etrurians (300 B.C.).² And in 189 B.C. the Ligurians, on account of their poverty at home, as Livy observes, made frequent incursions into Roman territory; hence this conduct was held a ground or cause for commencing war, "vel materia belli vel causa."³

Desecration of
sacred places.

Again, the desecration of sacred places was, especially amongst the Greeks, considered a justifiable cause for taking up arms against the offenders. Thus the main reason of the Greek offensive war against the Persians was to exact vengeance for their profanation of sacred objects. The Athenians refused to make terms with Xerxes, and expressed their determination to avenge the destruction by him of their temples and images of gods and heroes.⁴

Prevention of
peaceful
passage of
troops.

The prevention of the peaceful passage of troops over the territory of a State (especially if it was an ally), when assurances had been given of their

trepidationem raptim fecerat, sed ab iusto exercitu iusta ira facta . . . omnibus passim tectis agrorum vicisque etiam exustis, non arbore frugifera, non satis in spem frugum relictis, omni quae extra moenia fuit hominum pecudumque praeda abacta."

¹ Liv. vii. 19: "cognitum est depopulatum agrum circa Romanos salinas praedaeque partem in Caeritum fines avectam et haud dubie iuventutem eius populi inter praedatores fuisse . . . ex auctoritate patrum ac populi iussu Caeritibus bellum indixit."

² Liv. x. 11: "neque illos novus consul vastandis agris urendisque tectis, cum passim non villae solum sed frequentes quoque vici incendiis fumarent, elicere ad certamen potuit."

³ Liv. xxxix. 1: "nec deerat unquam cum iis vel materia belli vel causa, quia propter domesticam inopiam vicinos agros incursabant."

⁴ Herodot. viii. 144: *πρῶτα μὲν καὶ μέγιστα, τῶν θεῶν τὰ ἀγάλματα καὶ τὰ οἰκήματα ἐμπερησμένα τε καὶ συγκεχωσμένα, τοῖσι ἡμέας ἀναγκαίως ἔχει τιμωρεῖν ἐς τὰ μέγιστα μᾶλλον, ἢ περ ὁμολογεῖν τῷ ταῦτα ἐργασαμένῳ.*

refraining from all injurious acts, was occasionally considered sufficient justification for commencing hostilities. Thus in 360 B.C. the consuls Caius Sulpicius and Caius Licinius Calvus conducted an army against the Her-nicans; and on the return of the troops the Tiburtians shut their gates against them, and refused to allow them to traverse their country. The Romans had had other grievances, but, says Livy, this refusal was the determining cause—the ‘ultima causa’—for the declaration of war against the Tiburtian people, restitution having been previously demanded by the fetials.¹

The refusal, without sufficient reason, to surrender (*deditio*) such individuals of a State as had committed any offence against a sovereign or his subjects was, in general, held to be a proper ground for making war.²

From time to time various other causes were considered to be of sufficient weight for sanctioning the commencement of hostilities. Thus, on entering on the war with Demetrius, the Romans, says Polybius, looked out for a suitable opportunity and a decent pretext to justify them in the eyes of the world; for, indeed, they were quite rightly very careful on this point.³

This observation might, of course, be deemed a disparagement of Roman foreign policy and diplomatic methods. But, as the latter portion of the historian’s remark indicates, and as he has testified again and again, Roman war was well regularized, and was not waged without provocation after the manner of robbers and bandits, ‘more latronum.’ Sometimes, no doubt, the causes alleged were perhaps of a somewhat feeble

¹ Liv. vii. 9: “revertentibus inde eis Tiburtes portas clausere. ea ultima causa fuit, cum multae ante querimoniae ultro citroque iactatae essent, cur per fetiales rebus repetitis bellum Tiburti populo indiceretur.”

² See vol. i. pp. 358 *seq.*, on extradition.

³ Polyb. xxxvi. 2: “. . . καιρὸν ἐξήτουν ἐπιτήδειον καὶ πρόφασιν εὐσχήμονα πρὸς τοὺς ἐκτός. πολὺ γὰρ δὴ τοῦτου τοῦ μέρους ἐφρόν-τιζον Ῥωμαῖοι, καλῶς φρονούντες.

character ; but is indisputable that, on the whole, the Romans, in this respect, made a remarkable advance on all previous and contemporary practice.

Aim of war.

Speaking generally, warlike relationships were not established for the purpose of wantonly destroying those against whom grievances were alleged,¹ or for taking possession of their lands and goods on account of some trivial or trumpery charge. The real aim of war was to effect a reparation, previously denied, of some serious injury that had without reason been inflicted, or to exact the due expiation of a wrong conformably to divine injunctions. Thus Xenophon exhorted his men to have regard to moderation and honour, and not to plunder any city that was not in any way guilty of offences against them.² The purpose, declares Polybius, with which good men make war is not to destroy and annihilate the wrongdoers, but to reform and alter the wrongful acts; nor is it their object to involve the innocent in the destruction of the guilty,—οὐ γὰρ ἐπ' ἀπωλεία δεῖ καὶ ἀφανισμῶ τοῖς ἀγνοήσασι πολεμεῖν τοὺς ἀγαθοὺς ἄνδρας, ἀλλ' ἐπὶ διορθώσει καὶ μεταθέσει τῶν ἡμαρτημένων, οὐδὲ συναναρεῖν τὰ μηδὲν ἀδικοῦντα τοῖς ἡδικηκόσιν. . . .³ The same doctrine had long before been affirmed by Plato. Thus in the *Republic*, where Socrates and Glaucon discuss what acts ought to be forbidden in warfare, but distinguish, however, between war against Hellenes and that against barbarians, Socrates suggests that the quarrel, at least with Greeks, ought to be conducted solely with a view to reconciliation; that friendly correction ought to be the rule, not enslavement or destruction of the enemy. "And as they are Hellenes themselves they will not devastate Hellas, nor

¹ Cf. Polyb. v. 11 ; xviii. 37, where the historian relates the observation of Flaminius that it was not the way of Rome utterly to destroy those with whom she was at open war.

² Xenoph. *Anab.* vii. 1. 29.—Cf. *Cyrop.* vii. 1. 41.

³ v. 11.

will they burn houses, nor ever suppose that the whole population of a city—men, women, and children—are equally their enemies, for they know that the guilt of war is always confined to a few persons and that the many are their friends. And for all these reasons they will be unwilling to waste their lands and raze their houses; their enmity to them will only last until the many innocent sufferers have compelled the guilty few to give satisfaction.”¹

Only regular warfare waged with the object above described was considered legitimate, and under the protection of the gods. Sacred law prohibited the violation of peace without sufficient cause, or the commencement of hostilities against the adversary without the proper formalities and systematic procedure relating to the *rerum repetitio* (demand for redress) and *indictio* (actual declaration). Frequent mention of this principle is found in the ancient writers. Thus Livy again and again observes that law and religion alike forbid the proclamation of war and the leading of armies against a nation before sending the fetial ambassadors to state the complaints and demand reparation,—“*ne confestim bellum indiceretur neve exercitus mitteretur, religio obstitit; fetiales prius mittendos ad res repetendas censuere.*”² And even in pre-historic times in Greece, as, for example, in reference to the great wars against Troy and against Thebes, legendary accounts often mention the conducting of international negotiations, and the formal despatch of embassies (for instance, Odysseus sent by Helen,³ and Tydeus sent by the

Legitimate warfare demanded by human and divine law.

¹ *Repub.* v. 471A: Οὐδ' ἄρα τὴν Ἑλλάδα Ἕλληνες ὄντες κερουῶσιν, οὐδὲ οἰκίσεις ἐμπρήσουσιν, οὐδὲ ὁμολογήσουσιν ἐν ἑκάστη πόλει πάντας ἐχθροὺς αὐτοῖς εἶναι, καὶ ἄνδρας καὶ γυναῖκας καὶ παῖδας, ἀλλ' ὀλίγους αἰεὶ ἐχθροὺς τοὺς αἰτίους τῆς διαφορᾶς. καὶ διὰ ταῦτα πάντα οὔτε τὴν γῆν ἐβελήσουσι κείρειν αὐτῶν, ὡς φίλων τῶν πολλῶν, οὔτε οἰκίας ἀνατρέπειν· ἀλλὰ μέχρι τούτου ποιήσονται τὴν διαφορὰν, μέχρι οὐδ' ἂν οἱ αἰτίοι ἀναγκασθῶσιν ὑπὸ τῶν ἀναιτίων ἀλγοῦντων δοῦναι δίκην. (The English passage in the text is from Jowett's translation.)

² *Liv.* x. 45.—*Cf.* i. 24; iv. 30; ix. 45.

³ *Iliad*, iii. 205.

Achaean to Thebes¹) to obtain satisfaction for injuries prior to declaring war.

Humanity and
justice in war.

The Lacedaemonian ambassadors having arrived in Athens in 425 B.C., thus addressed the Athenians: "We think that great enmities are most effectually reconciled, not when one party seeks revenge and, getting a decided superiority, binds his adversary by enforced oaths and makes a treaty with him on unequal terms, but when, having in his power to do all this, he from a generous and equitable feeling overcomes his resentment, and by the moderation of his terms surprises his adversary, who, having suffered no violence at his hands, is bound to recompense his generosity not with evil but with good, and who, therefore, from a sense of honour, is more likely to keep his word."² Similarly, at the congress of Tempe, 197 B.C., held to discuss terms of peace between Rome and Philip, Flamininus emphasized that it was not the way of the Romans utterly to destroy those against whom they had made open war;³ and in proof of his assertion he instanced the war with Hannibal and the Carthaginians who, though they had offered his country the greatest provocation, and were subsequently at the mercy of Rome, were not subjected to extreme measures. For his part, he was averse from all irreconcilable hostility; he had never entertained the idea that there was any necessity to wage an inexpiable war against Philip. Brave men when actually engaged in open hostilities should, of course, be terrible and full of fire; when beaten, they ought to be undaunted and courageous; but, on the other hand, moderate, placable, and humane in the hour of victory,—*νικῶντας γε μὴν μετρίους καὶ πραεῖς καὶ φιλανθρώπους*.⁴ And Cicero declares that just as the penal law of a municipality ought to be impartially adjusted to the enormity of the crimes committed by citizens,⁵ so war as a means of obtaining

¹ *Iliad*. iv. 384; v. 803.—Cf. x. 285; xi. 139.

² Thuc. iv. 19.

³ Polyb. xviii. 37.

⁴ *Ibid.*

⁵ Cic. *De leg.* iii. 20.

restitution for the offences of foreign States, in order to be just, should be really necessary, based on good and sufficient grounds, and commenced and prosecuted in due order.¹

In the later history of Rome, when a certain degeneration was fast invading both public and private life, less attention was paid to the various considerations and requirements of practice which rendered the commencement and prosecution of war strictly legitimate; the earlier forcible reasons and solemn proceedings were being superseded by fictions and presumptions, not infrequently involving a mere display of superficial legality. From time to time more or less paltry pretexts, that would have been spurned by the high-minded senate of old, were seized upon as reasons for proclaiming hostilities.

Decline in later Rome.

It was mentioned above that even with regard to an ideal Greek State, as constructed by the philosophic imagination of Plato, a distinction was drawn between the treatment of Hellenes and that of barbarians. The rule and principles of war were considered both in Hellas and in Rome to be applicable only to civilized sovereign States, properly organized, and enjoying a regular constitution; and not to conglomerations of individuals living together in an irregular and precarious association. Rome did not regard as being within the comity of nations such fortuitous gatherings of people, but only those who were organized on a civilized basis, and governed, with a view to the general good, by a properly constructed system of law;—in Cicero's words: "omnis hominum coetus quoque modo congregatus sed coetus multitudinis iuris consensu et utilitatis commune consociatus."² Hence barbarians, savage tribes, bands of robbers and pirates, and the like, were debarred from the benefits and relaxations established by international law and custom. They were as much exempted from the Greek νόμιμα Ἑλλήνων, as they were

Law of war only for civilized communities.

¹ Cic. *De off.* i. 11.

² Cic. *De rep.* i. 25.

from the Roman *ius fetiale*, *ius belli et pacis*, or *ius gentium*.¹ Aristotle declared the identity of barbarism and slavery, referring to the phrase of Euripides that it was fitting for Greeks to rule barbarians,—‘βαρβάρων δ’ Ἑλληνας ἄρχειν εἰκός,’ ὡς ταὐτὸ φύσει βάρβαρον καὶ δούλον ὄν.² And in the same way, at the Panaetolium (the assembly of the Aetolians) one of Philip’s ambassadors, in the course of a speech on the question of foreigners obtaining a footing in the country, observed that with barbarians all Greeks wage ceaseless war, not merely on account of causes which change with the times, but of necessity,—“cum alienigenis, cum barbaris aeternum omnibus Graecis bellum est eritque, natura enim quae perpetua est, non mutabilibus causis hostes sunt.”³

War between
individuals as
well as States.

Further—and here is seen a difference from modern practice—every individual of the enemy State, and frequently, too, of its allies, was considered to be necessarily vested with enemy character. Nowadays, relationships of hostility are not strictly held to exist indiscriminately between the individuals belonging to the combatant States ; but certain salutary distinctions have been introduced in regard to the civil and military aspects of war.⁴ War is now conceived to be carried on only between States *qua* States ; though this doctrine did not obtain in the Middle Ages, or even in the time of Grotius.⁵ In laying down the provisions for his humane, enlightened, and eminently just Republic, Plato says : “Every man should regard the friend and enemy of the State as his

¹ On the relationships between the *ius fetiale*, *ius belli*, and *ius gentium*, see vol. i. pp. 94, 96 *seq.*

² *Polit.* i. 1. 5.—The first portion of the quotation is from Eurip. *Iph. in Aul.* 1400.

³ *Liv.* xxxi. 29.

⁴ Cf. the present writer’s *Effect of War on Contracts*, etc. (London, 1909), pp. 27 *seq.*

⁵ Cf. *De jure belli et pacis*, iii. 3. 9 : “Indictum autem bellum ei qui imperium in populo summum habet, simul indictum censetur omnibus eius non subditis tantum, sed et qui se socios adiuncturi sunt, ut qui accessio sint ipsius . . .”

own friend and enemy ; and if any one makes peace or war with another on his own account, and without the authority of the State, he, like the receiver of the exile, shall undergo the penalty of death. And if any fraction of the city declare war or peace against any, the generals shall indict the authors of this proceeding, and if they are convicted death shall be the penalty."¹

A public declaration of war must precede the actual commencement of hostilities. This appears to have been the rule also amongst the ancient Chinese, as well as the Hebrews.² Herodotus refers to the Greek custom of duly declaring war before beginning belligerent operations,—*ἔπεαν γὰρ ἀλλήλοισι πόλεμον προείπωσι . . . μάχονται.*³ The Corcyraeans proposed to the Corinthians to submit their difference to arbitration ; the offer was refused, and the Corinthians decided on war ; and, accordingly, they first despatched a herald to the enemy to make an announcement to this effect,—*προπέμψαντες κήρυκα πρότερον πόλεμον προερούντα . . .*⁴ Before laying siege to Epidamnus the Corcyraeans made proclamation that any Epidamnian who chose, and the foreigners, might leave the city in safety, but that all who remained would be treated as enemies,—*προείπον Ἐπιδαμνίων τε τὸν βουλόμενον καὶ τοὺς ξένους ἀπαθείς ἀπιέναι, εἰ δὲ μὴ, ὡς πολεμίους χρήσασθαι.*⁵ Similarly

Declaration of war.

¹ *Laws*, xii. 955 : Τὸν αὐτὸν φίλον τε καὶ ἐχθρὸν νομιζέτο πᾶς τῇ πόλει. εἴαν δέ τις ἰδίᾳ ποιῆται πρὸς τινὰς εἰρήνην ἢ πόλεμον ἄνευ τοῦ κοινοῦ, θάνατος ἔστω καὶ τούτῳ ζημία. εἴαν δέ τι μέρος τῆς πόλεως εἰρήνην ἢ πόλεμον πρὸς τινὰς ἑαυτῷ ποιῆται, τοὺς αἰτίους οἱ στρατηγοὶ ταύτης τῆς πράξεως εἰσαγόντων εἰς δικαστήριον, ἀφλόντι δὲ θάνατος ἔστω δίκη.

² Thus Müller-Jochmus, *op. cit.* p. 71, points out that the ancient Israelites engaged in war either in conformity with divine command, or on their own account for purposes of territorial extension ; and adds that in each case belligerent operations were first heralded by a proclamation,—“in beiden Fällen ging dem Ausbruch des Krieges eine Declaration voraus . . .” (referring to *Deut.* xxx. 10 ; and Maimonides, *Halach Melakim*, c. vi.).

³ Herodot. vii. 9. 2.

⁴ Thuc. i. 29.—Cf. *ibid.* i. 131 ; vi. 50.

⁵ Thuc. i. 26.

in Rome the practice of making a previous proclamation was still more firmly established.¹

In spite of the universal recognition of this principle there were, of course, cases of its infringement. The Spartans not infrequently omitted such previous notification. Thus Pausanias says, in reference to their designs on Messenia, that they neither declared war by herald, nor openly renounced their friendship.² But when Sparta in her turn was attacked by Pyrrhus without his making any declaration, the Lacedaemonian envoys, fully recognizing the obligation, remonstrated with him. His reply was: "We know well that neither do you Spartans tell any one beforehand what you mean to do."³

When
declaration
dispensed with.

Under certain circumstances it was held that declaration could justifiably be dispensed with; as, for example, in the case of commencing operations for self-defence when a sudden and violent attack was made by a foreign nation, or when that nation had already been committing various acts of open hostility. In 191 B.C., Manius Acilius, the consul, was directed by the senate to consult the college of fetials as to whether a declaration of war should be made to Antiochus in person, or whether it would suffice to notify it at some garrison town; further, whether a separate announcement should be made to the Aetolians, and whether their alliance and friendship ought not to be renounced prior to declaring war. The fetials replied that, under the circumstances, war could be legitimately proclaimed at one of the

¹ Cf. Cic. *De rep.* ii. 17 (referring to the institution of Tullus Hostilius): "Fecitque idem et saepsit de manibiis comitium et curiam, constituitque ius quo bella indicerentur, quod per se iustissime inventum sanxit fetiali religione, ut omne bellum, quod denuntiatum indictumque non esset, id iniustum esse atque inpium iudicaretur." See *infra*, chap. xxvi. as to the fetial procedure.

² Pausan. iv. 5. 3: Λακεδαιμόνιοι δὲ οὔτε κήρυκα ἀποστέλλουσι προερούντα Μεσσηνίοις πόλεμον, οὔτε προαπειπάμενοι τὴν φιλίαν. . .

³ Plut. *Pyrrhus*, 26: ἐγκαλούντων δὲ τῶν πρέσβειων, ὅτι μὴ καταγείλας πόλεμον ἐξενήνοχε πρὸς αὐτοὺς, ἀλλ' οὐδ' ὑμᾶς, ἔφη, τοὺς Σπαρτιάτας ἴσμεν ὅ τι ἂν μέλλητε ποιεῖν ἐτέροις προλεγόντας.

king's garrisons ; and that, in respect of the Aetolians, friendship had already been renounced by their own conduct, in refusing to make either restitution or apology when the Roman ambassadors had set forth their country's grievances. For, the fetials held, the Aetolians had by their own act made a declaration of war against themselves, when they seized by force Demetrias, a city in alliance with Rome, when they laid siege to Chalcis, and brought Antiochus into Europe to make war on the Romans.¹

Again, the notification could be omitted in the case of war against an improperly organized people, or against a nation deprived of independence and freedom, on the ground that legal equality could not obtain in the absence of juridical personality ; and in neither of these cases did the Romans admit such personality,—that is, so far as the family of nations was concerned. The *Digest* contains a specific provision defining a 'free State.'²

Further, previous declaration was naturally unnecessary in the event of a civil war.³

¹ Liv. xxxvi. 3 : " Consul deinde M. Acilius ex senatus consulto ad collegium fetialium retulit, ipsine utique regi Antiocho indiceretur bellum, an satis esset ad praesidium aliquod eius nuntiari ; et num Aetolis quoque separatim indici iuberent bellum, et num prius societas et amicitia eis renuntianda esset quam bellum indicendum. Fetiales responderunt, iam ante sese, quum de Philippo consulerentur, decrevisse nihil referre, ipsi coram an ad praesidium nuntiaretur ; amicitiam renuntiatam videri, quum legatis toties repetentibus res nec reddi nec satisfieri aequum censuissent ; Aetolos ultro sibi bellum indixisse, quum Demetriadem, sociorum urbem, per vim occupassent, Chalcidem terra marique oppugnatum issent, regem Antiochum in Europam ad bellum populo Romano inferendum traduxissent."

² *Dig.* xlix. 15. 7. 1 : " Liber autem populus est is, qui nullius alterius populi potestati est subiectus ; sive is foederatus est item, sive aequo foedere in amicitiam venit sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intelligatur alterum non esse liberum."

³ *Dig.* xlix. 15. 21. 1 : " In civilibus dissensionibus quamvis saepe per eas Respublica laedatur, non tamen in exitium Reipublicae contenditur ; qui in alterutras partes discedent, vice hostium non sunt."

Analogy
between the
formalities of
declaration and
private law
procedure.

It was suggested above that the *interpellatio*, the private suit of Roman jurisprudence, was in many respects analogous to the *rerum repetitio* of international law. There were, indeed, striking resemblances between the formal proceedings preliminary to war and the ordinary actions at law. Gaius, after enumerating five forms of statute-process¹ (*legis actiones*)—namely, *sacramentum* (stake or deposit), *iudicis postulatio* (demanding a *iudex*), *condictio* (formal notice), *manus iniectio* (arrest), *pignoris capio* (distress)—describes the ceremony of *sacramentum*, in which may be distinguished three stages: firstly, an oral pleading; secondly, trial by battle; and, finally, submission to peaceful adjudication. As to *condictio*, he points out that the word *condicere* in earlier Latin was equivalent to *denuntiare* (to give notice), and that therefore the action was appropriately termed, as the plaintiff used to give notice to the defendant to appear before the praetor on the thirtieth day;² but later the term was applied to a personal action, claiming the right to property, ‘*dari nobis oportere*.’³ Originally both *manus iniectio* and *pignoris capio* were forms of self-redress;⁴ and *manus iniectio* might be resorted to by the plaintiff in the case of a judgment debt, manifest theft, resistance to summons before the magistrate (*in ius vocatio*), forfeiture of the condition of the solemn contract of *nexum*.

And so we find in the various preliminaries to war, first, the *rerum repetitio*, or *clarigatio*, the demand for reparation, with an interval of thirty-three days given to the offending nation for reply; then, in case of refusal, deliberations in Rome as to whether the reasons thereof (if any were advanced) were adequate, and whether the grievance justified the commencement of hostilities,—in which case, of course, Rome was necessarily in the position both of a party to, and judge

¹ *Inst.* iv. 12.

² *Inst.* iv. 18.

³ *Ibid.*

⁴ Cf. Ovid. *Amor.* ii. 5. 30: “*Iniiciam dominas in mea iura manus.*”

of, its own cause ; and, finally, the *indictio, condictio*, or *denuntiatio belli*, the formal declaration of war, notifying the determination to resort to forcible measures of self-redress.

As to further similarities of a minor character, may be mentioned the somewhat analogous expressions, 'ius peragere' of the statute-process, and 'postulata peragere' to denote the claims set forth by the fetials. Again, in the deliberations of the senate use was made of such characteristic expressions as *dari, solvi, fieri oportere*, and *condicere*, as in the phrase, 'Quarum rerum litium causa condixit pater patratus . . .';¹ and in the actual declaration of war, the formula used² was, in its intrinsic significance, somewhat similar to that recited in the civil *manus iniectio*,—" . . . quod tu mihi iudicatus [or damnatus] es . . . quodoc non solvisti, ob eam rem . . . manum inicio . . ."³ And further, just as in the *sacramentum*, the claimant covered with his spear or wand the slave or thing over which he claimed dominion,⁴ so the beginning of hostile relationships was symbolized by hurling a spear on the territory of the offending State.⁵

It must be at once pointed out that in spite of these various resemblances, it is not intended here to press the comparison too far ; nor is it implied that the international proceedings were directly or consciously modelled on the civil process, or that their institution is of a later date than that of the private procedure. There is no doubt that in the more ancient times in Rome, there was such a close affinity between the two systems that no clear and definite line of demarcation between them was discernible. Indeed, writers like Danz go so far as to assert their identity, practically speaking, on the ground that the same forms were

This analogy
not to be
pressed too far.

¹ Liv. i. 32.—See under fetials, *infra*, chap. xxvi.

² Cf. Liv. i. 32 ; and see *infra*, chap. xxvi.

³ Gaius, iv. 21.

⁴ Gaius, iv. 16.

⁵ Liv. i. 32 ; and see *infra*, chap. xxvi.

adopted in international and private relationships, that international law and private jurisprudence constantly borrowed from each other the formalities of procedure.¹ But with respect to the *indictio belli* and the *iniectio manus*, for example, he draws too rigorous a parallelism, which is described—too severely, perhaps—by Fusinato as artificial and erroneous,—“*artifizioso ed erroneo.*”² It is curious how writers, investigating the origin of forms and institutions, evince a seemingly insuperable tendency to rush to extremes: either to identify too readily certain systems on account of their containing sundry common elements, or to regard them as disparate and unconnected, as a result of seizing on this or that difference exclusively, and exaggerating its importance.

¹ Danz, *Der sacrale Schutz . . .*, p. 179: “Es ist eine bekannte und unbestrittene Thatsache, dass öffentlicher und privater Rechtsverkehr in ältester Zeit sich in Rom wesentlich in denselben Formen bewegten. Und so bedienen sich bei völkerrechtlichen Streitigkeiten die Römer der Formen ihres Privatrechts und verwenden umgekehrt die Formen des internationalen Verkehrs auch für ihren privaten Rechtsverkehr. Privatrecht und öffentliches Recht haben sich eben nach Innen und Aussen in ältester Zeit nicht geschieden.”

² *Dei feziali . . .*, *loc. cit.* p. 520.

CHAPTER XXIII

WAR : GENERAL PRACTICE—RELAXATIONS

As to the practices in war in the ancient East, it is, on the whole, a monotonous story of unrestrained cruelty, ferocity, barbaric treatment, and entire disregard of all considerations, save the attainment of the belligerents' object by whatever means could be resorted to. Here and there, however, we find deviations from this general practice, and various humane relaxations, which, honourably distinguishing the exceptional cases, serve but to emphasize the usual oriental savagery. War practices in the East.

The Assyrians, the Phoenicians, and the Egyptians were given to treachery, inhuman passion, destruction of every thing and every living being in their way, whether or not the victims took part in the wars against them. Ptolemy Lathyrus, for example, overran the territory of Judaea, strangled Jewish women and children, and boiled them in cauldrons, thus securing for his country a reputation for cannibalism.¹ The Assyrians, etc.

Amongst the Hebrews there was at times a similar practice of indiscriminating slaughter, and seizure of lands, which were considered to be by divine decree destined for the favoured conquerors. Their deeds of blood were conceived to be a religious duty towards God, a fulfilment of the divine judgment; as Bluntschli says: "Diese entsetzliche Blutthat wurde wie eine religiöse Pflicht gegen Gott, wie ein Vollzug" The Hebrews.

¹ Josephus, *Antiq.* xii. 10; xiii. 6, 12.

des göttlichen Strafgerichts angesehen."¹ But from time to time they manifested conspicuous moderation and even remarkable generosity.² Thus the humane conduct of the patriarch Abraham has been pointed out, inasmuch as he refused to take possession of the booty which victory over the king of Sodom duly assigned to him, and to enrich himself at the expense of the latter.³

China.

Similarly in ancient China extreme cruelty and brutality obtained; but occasionally there were likewise prominent instances of mercy and generosity. "We find an invading chief enjoining, under penalty of death, respect for the very trees that overshadow the tomb of a philosopher, and at the same time setting a price on the head of a rival prince."⁴

The Hindoos.

As to the Hindoos, the code of Manu⁵ established striking relaxations. The Hindoo warrior was forbidden to use poisoned arrows, to put to death the suppliant, the enemy who surrenders as a prisoner, disarmed or defenceless persons, labourers in the field, or to devastate plantations and land under cultivation.⁶ These rules, however, were—to judge from the native epics and narratives of warlike operations—frequently

¹ J. C. Bluntschli, *Das Beuterecht im Krieg und das Seebeuterecht insbesondere* (Nördlingen, 1878), p. 12.

² *Ibid.* p. 12: "Zuweilen regten sich auch unter den Juden menschlichere Gedanken."

³ *Gen.* xiv. 21-23.—Thus when the king of Sodom appealed to him to liberate the prisoners and to retain everything else, the patriarch declared "that from the very woof thread unto the shoe latchet, I will not take of anything that are thine, lest thou say, I have enriched Abram."

⁴ Martin, *Traces of int. law in ancient China, loc. cit.* p. 74.

⁵ Cf. for example, vii. 91, 92.

⁶ Cf. Haelschner, *De jure gentium quale fuerit apud gentes orientis* (Halae, 1842), p. 35: "Cavent ne milites vel sanguinolentis dentatis sagittis vel armis veneno imbutis et ignivomis utantur, ne, qui ex curru pugnent, pedites aggrediantur, ne quis misericordiam petentem vel se in fidem hostis permittentem vel dormientem, vel eum qui lorica perdiderit, vel graviter saucium, vel cuius arma rupta sint, interficiat."

violated. Besides, they were held to apply only to kindred races, and not to the 'barbarian' aliens. Laurent, who manifests too ready a disposition to see little but evil in the early non-Christian nations, says that the laws of Manu savour of a profound Machiavellianism,—“sans doute aussi, les lois de Manou respirent un machiavélisme profond.”¹ It would seem, in the eyes of this writer, that a nation or society which falls in practice below its idealistic theory is to be condemned beyond redemption.

Persia is an example of constant devotion to pillage, ^{Persia.} destruction, and massacre. Herodotus relates that when Darius took Babylon he not only demolished the walls, and bore away all the gates, but he impaled some three thousand of the most distinguished inhabitants.² And Xerxes even surpassed the conduct of his predecessor; he went so far, says the same historian, as to violate the customary respect due to the dead by ordering the head of Leonidas to be cut off, and fixed on a pole.³ Though this act merited the severest condemnation, Herodotus declares, however, that, as a rule, the Persians were wont to honour men who had shown bravery in war,—ἐπεὶ τιμᾶν μάλιστα νομίζουσι τῶν ἐγὼ οἶδα ἀνθρώπων Πέρσαι ἄνδρας ἀγαθοὺς τὰ πολέμια.⁴ Again, in Greece Xerxes ravaged the country, burned down numerous cities, plundered temples, violated women.⁵ Several centuries later, the Persians, under Sapor, in their hostilities against the Romans, exhibited no less fury and inhumanity than their forefathers had done. After the defeat of the emperor Valerian at Edessa, A.D. 260, Sapor overran Syria, Cilicia, and Cappadocia, and ordered a general massacre at Caesarea. Roman prisoners were subjected to every form of relentless cruelty. “We are told,” writes Gibbon, “that Valerian, in chains, but invested with the imperial

¹ *Hist. du dr. des gens*, vol. i. pp. 124 seq.

² Herodot. iii. 159.

³ *Ibid.* vii. 238.

⁴ *Ibid.*

⁵ *Ibid.* viii. 33.—Cf. viii. 50.

purple, was exposed to the multitude, a constant spectacle of fallen greatness; and that whenever the Persian monarch mounted on horseback, he placed his foot on the neck of a Roman emperor. . . . When Valerian sunk under the weight of shame and grief, his skin, stuffed with straw, and formed into the likeness of a human figure, was preserved for ages in the most celebrated temple of Persia."¹ Probably this report, as Gibbon points out, is based on fictitious stories; though the act in question was certainly in keeping with the general war practices of the Persians. Still later, in A.D. 359, a Persian monarch crucified Roman captives, treacherously seized Arsaces, the Armenian king, blinded and tortured him.²

Macedonia.

The Macedonians were no exception to the rule. Alexander's wars form a narrative of pillage and conflagration, putting to death prisoners, women, and children, and the sick.³ As Plutarch says, he considered war a distraction or pastime.⁴ Antigonus reproved a sophist who was reading to him certain passages on justice; what was justice to him (he exclaimed), whose business it was to take possession of the cities of others? ⁵

Carthage.

The Carthaginian war practices were likewise characterized by unremitting ferocity and inhumanity. The 'crudelitas' of Hannibal was a byword with the Romans.⁶ Livy says (no doubt with some exaggeration) that his soldiers, who were savage and ferocious by nature, were made still more so by their general's orders to form bridges and works with heaps of human bodies, and by his teaching them to live on human

¹ *Decline and fall of the Roman Empire*, c. x. in fin.

² Amm. Marcell. xix. 9; xxvii. 12.

³ Arrian, iv. v. vi. *passim*; Diodor. xvii. 102, 104.

⁴ Plut. *Alex.* 72: τοῦ δὲ πένθους παρηγορία τῷ πολέμῳ χρώμενος ὡσπερ ἐπὶ θήραν καὶ κνηγεσίαν ἀνθρώπων ἐξῆλθε. . . .

⁵ Plut. *De Alex. Fort.* i. 9: ἀβέλτερος εἶ, εἶπεν, ὃς ὀρῶν με τὰς ἀλλοτρίας πόλεις τύπτοντα λέγεις περὶ δικαιοσύνης.

⁶ Cf. Liv. xxi. 13, 14; Eutrop. iii. 11.

flesh.¹ 'Punica fides' (Carthaginian faith) became proverbial for faithlessness and treachery.² When Regulus invaded Africa in 256 B.C. the Carthaginians far surpassed his stern measures by their immolation of human victims, and by other odious atrocities.³ Their ferocious conduct in the Sicilian war has been recorded; in Agrigentum, men were dragged from the temples and put to death.⁴

Now as to the general practice of war in Hellas. War practices in Hellas. Here we find remarkable oscillations of warlike policy. Brutal treatment and noble generous conduct are manifested at the same epoch, in the same war, and apparently under similar circumstances. At times we hear of proceedings which testify to the intellectual and artistic temperament of the Greeks; at other times, we read narratives which emphasize the fundamental cruelty and disregard of human claims prevalent amongst the ancient races when at war with each other.

In Homer, the antagonism between Hellenes and barbarians, which later furnished a radical discrimination, is scarcely manifested. In Homeric times. The will of the gods played an important part. They urged on their votaries more out of passion than justice.⁵ No revenge could be terrible enough for offences committed against the national gods, or for acts of treachery against a city. Hostilities for the most part assumed the form of indiscriminate brigandage, and were but rarely conducted with a view to achieving regular conquests, and

¹ Liv. xxiii. 5: "hunc natura et moribus immitem ferumque insuper dux ipse efferavit pontibus ac molibus ex humanorum corporum strue faciendis, et quod proloqui etiam piget, vesci corporibus humanis docendo."

² Cf. Sall. *Iug.* 108; Liv. xxi. 4; xlii. 47; Florus, ii. 2, 6 and 17, etc.

³ Cf. Eutrop. ii. 25.—No doubt the story of Regulus is to a large extent imaginary, and due to the Roman indignation against their brutal adversaries.

⁴ Diodor. xiii. 57.

⁵ Cf. *Iliad*, xx. 22 *seq.* (the speech of Zeus), 312 *seq.* (Hera's declaration); xxiv. 23 *seq.* (speech of Phoebus Apollo).

extending the territory of the victorious community. Extermination rather than subjection of the enemy was the usual practice. After Troy was taken, the Greeks did not think of taking possession of Priam's kingdom; the town was simply destroyed, the inhabitants enslaved or put to death, and an imprecation pronounced on the very soil that had belonged to the victims.¹ Sometimes prisoners were sacrificed to the gods,² corpses mutilated,³ and mercy refused to children, and to the old and sickly.⁴ Achilles was the typical hero of the age, and, as Laurent remarks,⁵ the warlike cruelty of the time seemed to be concentrated in him, who, after the death of Patroclus, thirsted for blood and slaughter.⁶

On the other hand, acts of mercy and nobility were frequent. Suppliants were spared. The rights and privileges of hospitality were respected, even as between enemies. Truces were granted for the burial of the dead. The right of sanctuary was generally observed. The adoption of certain cowardly, inhuman practices,

¹ Cf. Laurent, *op. cit.* vol. ii. p. 32 : " Dans les siècles héroïques, on voit à peine une trace de conquête ; les hostilités se passent en brigandages ; lorsqu'elles prennent un caractère plus prononcé, elles tendent à l'extermination des vaincus ; après la prise de Troie, les Grecs ne songent pas à s'emparer du royaume de Priam, la ville est détruite, les habitants sont tués ou emmenés en esclavage, le sol maudit."—*Iliad*, i. 367 ; vi. 58 ; ix. 588 ; xxii. 64.

² *Iliad*, xviii. 318 *seq.* ; xxiii. 175 *seq.* (where it is related Achilles slew twelve Trojans).

³ *Iliad*, xi. 145-7 ; xiii. 203 *seq.* ; xvii. 34 *seq.*

⁴ Cf. Ovid's account of Astyanax, the son of Hector and Andromache, who, at the destruction of Troy, was cast down by Ulysses from a tower :

"Mittitur Astyanax illis de turribus, unde
Pugnantem pro se proavitaque regna tuentem
Saepe videre patrem monstratum a matre solebat."

(*Metam.* xiii. 415-417.)

⁵ *Op. cit.* p. 34 : " Tout ce que les mœurs héroïques avaient de cruauté semble se concentrer dans la conduite d'Achille. Après la mort de Patrocle, il ne respire que le sang et le carnage."

⁶ *Iliad*, xix. 213 *seq.*

such as, for example, the use of poisoned weapons, was condemned. Thus, when Odysseus had gone to Ephyra to procure a deadly drug for smearing his arrows, Ilus refused to give it to him, on the ground that the gods would not sanction such an act :

φάρμακον ἀνδροφόνον διζήμενος, ὄφρα οἱ εἴη
 ἰοὺς χρίεσθαι χαλκήρεας· ἀλλ' ὁ μὲν οὐ οἱ
 δῶκεν, ἐπεὶ ῥα θεοὺς νεμεσίετο αἰὲν ἕοντας.¹

Then, again, a certain artistic ideal was applied in the institution of single combats between chiefs and distinguished warriors, who thus played the part, as it were, of the protagonists of a tragedy, whilst their respective nations filled that of the spectators and judges of fair play. Thus was fought the duel between Paris and Menelaus.² Similarly, as Herodotus relates, in the case of a dispute between Sparta and Argos as to a tract of land, it was agreed at a conference between the parties that three hundred men chosen from each side should engage, and that whichever party was victorious should be entitled to the contested territory.³ Again, the same historian states that in the wars with the Persians, a difference having arisen in the Plataean territory between the Athenians and the Tegeans respecting the command of one of the wings, the latter, in support of their claim, thus described how they had gained that honour together with other privileges: "When we, in conjunction with the Achaeans and Ionians, who were then in Peloponnesus, having marched out to the Isthmus, were posted opposite the invaders, then it is related that Hyllus made proclamation, that it would be better not to run the hazard of engaging army with army; but that from the Peloponnesian camp, the man amongst them whom

Single
 combats,
 instead of
 general
 conflicts.

¹ *Odys.* i. 261-3. ² *Iliad*, iii. 67 *seq.*—*Cf.* *Odys.* i. 261 *seq.*

³ Herodot. i. 82 : βοηθησάντων δὲ Ἀργείων τῇ σφετέρῃ ἀποταμνομένη, ἐνθαῦτα συνέβησαν ἐς λόγους συνελθόντες, ὥστε τριηκοσίους ἑκατέρων μαχέσασθαι· ὀκότεροι δ' ἂν περιγέωνται, τούτῳ εἶναι τὸν χῆρον.

they judge to be the best, should fight singly with him on certain conditions. The Peloponnesians determined that this should be done; and they took oaths on the following terms: that if Hyllus should conquer the Peloponnesian leader, the Heraclidæ should return to their paternal possessions; but if he should be conquered, the Heraclidæ should depart and lead off their army, and not seek to return into Peloponnesus during the space of a hundred years. And Echemus, son of Aeropus, son of Phegeus, who was our king and general, having volunteered, was chosen out of all the allies, and fought singly, and slew Hyllus."¹

In the
historical
epoch in
Greece.

In Greek historical times, practices in war were usually of a severe character. But here, again, are to be also noticed milder proceedings indicating a distinct advance. In cases where no declaration was made, where the belligerents neither despatched nor received heralds, where no negotiations of any kind, of a diplomatic or of a military nature, were carried on, greater rigour usually obtained. A war of this description was designated *πόλεμος ἀκήρυκτος καὶ ἄσπονδος* (heraldless and truceless war). Thus the Aeginetæ levied war on the Athenians without proclamation, and soon ravaged Phalerum and many villages on the coast.²

In reference to the conduct of war in Greece, it is important to remember that it was between small States, whose subjects were to an extraordinary degree animated by patriotism and devotion to their mother-country, that each individual was much more affected by hostilities than are the cities of the large modern States, that every individual was a soldier-politician who saw his home, his life, his family, his gods at stake, and, finally, that he of necessity regarded each and every subject of the opposing State as his personal adversary.

¹ Herodot. ix. 26. (The translation is that of Cary.)

² Herodot. v. 81: . . . πόλεμον ἀκήρυκτον Ἀθηναίοισι ἐπέφερον. —Cf. Demosth. *De coron.* 262: ἦν γὰρ ἄσπονδος καὶ ἀκήρυκτος ἡμῖν πρὸς τοὺς θεατᾶς πόλεμος.

Schömann contrasts the struggle of the ancient Greek cities with the conflicts of the Middle Ages, when the mercenary wars caused no great effusion of blood, and compares it with the more calamitous American war of secession.¹

The Spartans, whose callous disposition was fostered by their severe military training and constant barrack life, were more particularly addicted to harshness of treatment. They were actuated solely by considerations of State-interest;² and to promote their object they sometimes permitted themselves extreme measures. Cleomenes, their king, is said to have proclaimed that the infliction of every species of injury on the enemy was justified by gods and men.³ In the first Messenian war (743-724 B.C.) the Lacedaemonians crossed the Messenian frontier without any previous declaration, surprised the fortress of Amphea, and indiscriminately put the inhabitants to the sword;⁴ and in the end they razed Ithome to the ground, reduced the whole country to subjection, and treated with great severity the people who had not escaped, making them helots, scourging them, and loading them with chains,—“servitutis verbera, plerumque et vincula, caeteraque captivitatis mala.”⁵ Tyrtaeus, whose war-songs inspired the Spartans in the second war, says of the treatment of the Messenians that they were worn down like asses by heavy burthens, that they were compelled to hand over to their conquerors an entire half of the produce of

Spartan
harshness.

¹ *Gr. Alter.* p. 11, note 4: “. . . der in unserem Jahrhundert unter den Nordamerikanern geführte Bürgerkrieg in mancher Hinsicht an die Kriege der alten Griechen erinnern kann.”

² *Plut. Ages.* 23; and see *supra*, pp. 90 *seq.*

³ *Plut. Apophth. Lacon.* s.v. *Cleomenes*, 223 B: ἄλλως τε καὶ ὁ τι ἂν κακόν τις ποιῇ τοῖς πολεμίοις, τοῦτο καὶ παρὰ θεοῖς καὶ παρὰ ἀνθρώποις δίκης ὑπέρτερον νομίζεσθαι.

⁴ *Pausan.* iv. 5. 9: . . . καὶ τῶν Μεσσηνίων τοὺς ἐγκαταληφθέντας φονεύουσι, τοὺς μὲν ἔτι ἐν ταῖς εὐναῖς, τοὺς δέ, ὡς ἦσθοντο, πρὸς τε ἱερὰ θεῶν καὶ βωμῶν καθήμενους ἰκέτας.

⁵ *Justin*, iii. 5.

their fields, and to come in the garb of woe to Sparta, themselves and their wives, as mourners at the death of kings and chieftains.

Conduct in
the
Peloponnesian
war.

In the Peloponnesian war brutal conduct on both sides was not wanting. Recognized rules were not rarely violated. Most acts were determined by the criterion of expediency and utility, irrespective of justice to the opponents,—a principle which was emphatically affirmed in the Melian controversy.¹ Inhabitants of surrendered cities were sometimes reduced to slavery.² The Spartans ruthlessly slaughtered peaceful traders captured at sea, whether they were citizens of Athens, their enemy, or of her allies, or of neutral States.³ On the other hand, the Athenians resorted to cruel reprisals. Some Lacedaemonian ambassadors who fell into their hands were put to death without trial and without being permitted to make any statement, and their bodies were hurled down precipices.⁴ On some occasions intense ferocity was manifested against fellow-citizens, and even kinsmen, as in the case of the Corcyraean sedition, 427 B.C. Every form of death, says Thucydides, was employed; and all the worst features of revolutions appeared. Sons were slain by their fathers, suppliants were torn from the sanctuaries and slaughtered, and some were even walled up in the temple of Dionysus and there allowed to perish.⁵ The oligarchs were secured by a treacherous trick, cruelly scourged, and massacred. Captive women were reduced to slavery.⁶ At the surrender of Melos, 416 B.C., the Athenians put to

¹ Cf. Thuc. v. 89, 105; vi. 85.

² Thuc. i. 29.

³ Thuc. ii. 67: πάντας γὰρ δὴ κατ' ἀρχὰς τοῦ πολέμου οἱ Λακεδαιμόνιοι, ὅσους λάβοιεν ἐν τῇ θαλάσῃ, ὡς πολεμίους διέφθειρον, καὶ τοὺς μετὰ Ἀθηναίων ξυμπολεμοῦντας καὶ τοὺς μηδὲ μεθ' ἐτέρων.

⁴ *Ibid.*: . . . ἀκρίτους καὶ βουλομένους ἔστιν ἂ εἰπεῖν αὐθημερὸν ἀπέκτειναν πάντας καὶ ἐς φάραγγας ἐσέβαλον. . . .

⁵ Thuc. iii. 81; cf. iii. 85.

⁶ Thuc. iv. 47, 48.

death all men who were of military age, and made slaves of the women and children.¹

And yet milder practices were often adopted, and principles of justice, honour, and humanity recognized, claimed, and insisted on. Thus, in the address of the Plataean deputies in defence of the capitulated garrison (consisting of two hundred Plataeans and twenty-five Athenians), the Plataeans, in an eloquent appeal for fairness and humaneness, said to their Lacedaemonian judges: "Men of Lacedaemon, we surrendered our city because we had confidence in you; we were under the impression that the trial to which we submitted would be legal, and of a very different kind from this; and when we accepted you and you alone to be our judges, which indeed you are, we thought that at your hands we had the best hope of obtaining justice. . . .² To your short question, 'whether in this war we have done any service to the Lacedaemonians and their allies,' we reply that if we are enemies you are not wronged, because you have received no good from us; and if you deem us friends, you who have made war upon us, and not we, are to blame. . . .³ When we sought your help against the violence of the Thebans, you rejected us and bade us turn to the Athenians. . . .⁴ Yet even in this war you have neither suffered nor were ever likely to suffer anything very atrocious at our hands. If we refused to revolt from the Athenians at your bidding, we were quite right; for they assisted us against the Thebans when you shrunk from the task; and after this it would have been dishonourable to betray them. . . .⁵ They [the Thebans] came not only in time of peace, but at a holy season,⁶ and attempted to

Adoption of, and insistence on, milder practices.

Notable argument attributed by Thucydides to the Plataean deputies, who appeared before the Spartan judges.

¹ Thuc. v. 116: οἱ δὲ ἀπέκτειναν Μηλίῳν ὄσους ἡβῶντας ἔλαβον, παῖδας δὲ καὶ γυναῖκας ἠνδραπόδισαν.

² Thuc. iii. 53.

³ *Ibid.* iii. 54.

⁴ This was in 519 B.C.

⁵ iii. 55: ἐν μέντοι τῷ πολέμῳ οὐδὲν ἐκπρεπέστερον ὑπὸ ἡμῶν οὔτε ἐπάθετε οὔτε ἐμελλήσατε. εἰ δ' ἀποστήναι Ἀθηναίων οὐκ ἠθελήσαμεν ὑμῶν κελευσάντων, οὐκ ἠδικοῦμεν.

⁶ On festival truces, see *infra*, pp. 284 *seq.*

seize our city ; we righteously and in accordance with universal law defended ourselves and punished the aggressor, and there is no reason why we should now suffer for their satisfaction. . . .¹ Consider, before you act, that hitherto you have been generally esteemed among Hellenes to be a pattern of nobility ; if you decide unjustly . . . mankind will be indignant at the strange and disgraceful sentence which you will have passed against good men. . . . They will not endure to see spoils taken from us, the benefactors of Hellas, dedicated by our enemies in the common temples. Will it not be deemed a monstrous thing that the Lacedaemonians should desolate Plataea . . . ?² Do not bring upon yourselves an evil name merely to gratify others. For, although you may quickly take our lives, you will not so easily obliterate the infamy of the deed. We are not enemies whom you might justly punish, but friends who were compelled to go to war with you ; and therefore piety demands that you should spare our lives. Before you pass judgment, consider that we surrendered ourselves, and stretched out our hands to you ; the custom of Hellas does not allow the suppliant to be put to death. . . .³ These things [*i.e.* the consequences of an unjust sentence], O Lacedaemonians, would not be for your honour. They would be an offence against the common feeling of Hellas, and against your ancestors. . . .⁴ Our last word is that we did not surrender Plataea to the Thebans . . . but to you, in whom we trusted, and, if you will not listen to us, you ought at least to replace

¹ iii. 56: πόλιν γὰρ αὐτοὺς τὴν ἡμετέραν καταλαμβάνοντας ἐν σπονδαῖς καὶ προσέτι ἱερομηνία ὀρθῶς ἐτιμωρησάμεθα, κατὰ τὸν πᾶσι νόμον καθεστῶτα, τὸν ἐπιόντα πολέμιον ὅσιον εἶναι ἀμύνεσθαι· καὶ νῦν οὐκ ἂν εἰκότως δι' αὐτοὺς βλαπτοίμεθα.

² iii. 57: δεινὸν δὲ δόξει εἶναι Πλάταιαν Λακεδαιμονίουσ πορθῆσαι. . . .

³ iii. 58: . . . ὁ δὲ νόμος τοῖς Ἑλλησι μὴ κτείνειν τούτους. . . .

⁴ iii. 59: . . . οὔτε ἐς τὰ κοινὰ τῶν Ἑλλήνων νόμιμα καὶ ἐς τοὺς προγόνους ἀμαρτάνειν. . . .

us in the same position, and allow us to choose our destiny, whatever it may be."¹

The Thebans, in reply, urged that the Plataeans had repudiated an agreement made with them, and went over to the Athenians, and also deserted a previous alliance with the Lacedaemonians, and that they (the Thebans) had assailed Plataea only at the invitation of the most influential and patriotic Plataean citizens, who desired to be withdrawn from a foreign alliance, and that the Plataeans had themselves been guilty of iniquitous conduct in slaying Thebans to whom quarter had been given.² "Maintain, then, Lacedaemonians, the common Hellenic law which they have outraged, and give to us, who have suffered contrary to law, the just recompense of our zeal in your cause."³

Although the pleading of the Plataeans proved unsuccessful, and the whole garrison was sacrificed for reasons of State policy, yet their arguments (as also those of the Thebans, however) set forth principles which were recognized in general to possess legal force, notwithstanding occasional, or even frequent, infringements thereof. To point to offences against rules does not necessarily disprove the validity and juridical significance of those rules. Within our own recent experience, many rules and provisions which were universally esteemed to be firmly established as a part of international law, have, on the outbreak of war, been deliberately disregarded. In ancient times, as in our own age, the violation of recognized international principles of conduct, whether committed wilfully or through pressure of what was conceived to be insuperable necessity, did not negative the binding force of such principles, any more than a breach of private law by a citizen pointed to its inoperativeness in his city.

¹ iii. 59.

² iii. 64-67.

³ iii. 67: ἀμύνετε οὖν, ᾧ Λακεδαιμόνιοι, καὶ τῷ τῶν Ἑλλήνων νόμῳ ὑπὸ τῶνδε παραβαθέντι, καὶ ἡμῖν ἄνομα παθοῦσιν ἀνταπόδοτε χάριν δικαίαν ᾧν πρόθυμοι γεγενήμεθα. . .

Triumph of
State policy.

Practice in the
Persian wars.

In the Persian wars the warfare of the Greeks was far less liable to recrimination than that of their adversaries. The Hellenes proved they could respect the fundamental principles of international justice, and restrain themselves from acts of retaliation which might seem to be warranted by the brutal excesses of their enemy.¹ Perhaps the most conspicuous instance of cruelty on the part of the Greeks was the order of Pausanias at the battle of Plataea, 479 B.C., not to give quarter. But probably this was less an act of vengeance or ferocity than a result of their incapacity to look after great numbers of prisoners, particularly so as they were 'barbarians.'² Herodotus relates that after the defeat of the Persians by Pausanias, Lampon, one of the most eminent of the Aeginetae, advised him to impale Mardonius (the king's son-in-law) in revenge for the like usage of Leonidas (the uncle of Pausanias), who died at Thermopylae. But the Spartan commander replied as follows: 'My Aeginetan friend, I admire your good intentions and your prudence; but you have failed to form a right judgment; for having highly extolled me, my country, and my achievement, you have thrown all down again to nothing by advising me to insult a dead body, and saying that if I do so I shall increase my fame, which is more fit for barbarians to do than Greeks, and which we abhor even in them. . . . However, do not you hereafter come to me with such

¹ Cf. Laurent, *op. cit.* vol. ii, p. 177, who remarks that the exaltation of their patriotism seemed to purge their feelings and elevate their souls: "On dirait que l'exaltation du patriotisme avait épuré leurs sentiments et élevé leurs âmes." The same author is prepared to admit that in comparison with other nations of antiquity the Greeks possessed 'germs' of mildness: "Cependant si on compare les Grecs aux autres nations, on doit reconnaître chez eux des germes de la douce vertu qui manquait à l'antiquité" (ii. p. 127).

² Diodor. xi. 32. 5: ὁ γὰρ στρατηγὸς τῶν Ἑλλήνων Πausανίας ὁρῶν τοῖς πλήθεσιν ὑπερέχοντας τοὺς βαρβάρους, εὐλαβεῖτο μὴ τι παράλογον γένηται, πολλαπλασίων ὄντων τῶν βαρβάρων. διὰ καὶ παραγγείλαντος αὐτοῦ μηδένα ζωγρεῖν, ταχὺ πλῆθος ἄπιστων νεκρῶν ἐγένετο.

a proposal, nor give such advice; and be thankful that you escape unpunished.’¹ Then Pausanias made a proclamation that no one should touch the body, which was afterwards interred, and a monument erected over it.

Earlier legislators in Greece, like Charondas, may have, under certain circumstances, sanctioned the *ius talionis*; ^{The law of retaliation.} but it never became established as a general principle amongst the Hellenic communities. Thus Aristotle referring to the Pythagorean doctrine that justice was retaliation on one’s neighbours,³ criticizes this definition on the ground that retaliation does not harmonize with the conception of either distributive or corrective justice, which he invokes as the essential criterion.⁴ Similarly, Polybius repudiates the plea of retaliation advanced by Philip,⁵ that is, when effected by the like illegitimate proceedings. Thus after the congress of the allies at Corinth declared war against the Aetolians for plundering temples and for committing other gross depredations, Philip informed the offenders that if they had any justification to put forward on the points alleged against them, they might even at that late hour meet and settle the controversy in conference; but if they imagined that, omitting all public declaration of war, they would be allowed at

¹ Herodot. ix. 79: “Ὁ ξείνε Αἰγινήτα, τὸ μὲν εὐνοεῖν τε καὶ προορᾶν, ἄγαμαι σεῦ· γνώμης μέντοι ἡμάρτηκας χρηστής. ἐξάρας γάρ με ὑψοῦ καὶ τὴν πάτρην καὶ τὸ ἔργον, ἐς τὸ μηδὲν κατέβαλες, παραινέων νεκρῷ λυμáινεσθαι· καὶ, ἣν ταῦτα ποιέω, φὰς ἄμεινόν με ἀκούσεσθαι. τὰ πρέπει μᾶλλον βαρβάρουσι ποιέειν ἢ περὶ Ἑλλήσιν· καὶ ἐκείνοισι δὲ ἐπιφθονέομεν. . . . σὺ μέντοι ἔτι ἔχων λόγον τοιόνδε, μήτε προσέλθης ἔμοιγε, μήτε συμβουλευῆς· χάριν τε ἴσθι, ἐὼν ἀπαθής.”

² Diodor. xii. 17. 4: νόμου γὰρ ὄντος, εἰάν τις τινος ὀφθαλμὸν ἐκκόψῃ, ἀντεκκόπτεσθαι τὸν ἐκείνου. . . .

³ Arist. *Nic. Eth.* v. 8: δοκεῖ δὲ τισι καὶ τὸ ἀντιπεπονθὸς εἶναι ἀπλῶς δίκαιον, ὡς περ οἱ Πυθαγόρειοι ἔφασαν.

⁴ *Ibid.*: τὸ δ’ ἀντιπεπονθὸς οὐκ ἐφαρμόττει οὐτ’ ἐπὶ τὸ διανεμητικὸν δίκαιον οὐτ’ ἐπὶ τὸ διορθωτικόν.

⁵ Polyb. iv. 27.—Cf. the following chapter, as to the inviolability of temples and graves.

random to sack and plunder without the injured parties' retaliating—on the pain of being held, should they do so, to have commenced hostilities—they were the most foolish people in the world.¹

The doctrine
of necessity.

Of course, then, as now, departures from inveterate custom and established law respecting warlike proceedings were made in virtue of supreme 'necessity,' actual or alleged. The Athenians, in defence of their having drawn for common use the sacred water of the temple of Delium, urged, in reply to the Boeotian accusation of sacrilege, that their conduct was not wanton, but was demanded by necessity, in the protection of their territory against Boeotian aggression. When men were oppressed by war, they pleaded, or by some other dire calamity, it was not unreasonable to believe that their offence was pardoned by the god himself,—πᾶν δ' εἰκὸς εἶναι τῷ πολέμῳ καὶ δεινῷ τινὶ κατειργόμενον ξύγγνωμόν τι γίγνεσθαι καὶ πρὸς τοῦ θεοῦ.² Similarly, Polybius declares that in accordance with the dictates of necessity, Aristaenus showed himself to be a prudent opportunist rather than a traitor in causing the Achaeans to recede from their alliance with Philip and join that of Rome.³

Have we not, in our own times, advocates of the doctrine that the binding force of the laws of war in general may be disregarded in case of extreme necessity?⁴ These writers draw a distinction between *Kriegsräson* (the *titulus necessitatis* of Grotius), implying what is permissible in exceptional cases, and *Kriegsmanier*, the ordinary rules of warfare; and they insist that to attain

¹ Polyb. iv. 26: εἰ δ' ὑπειλήφασι, διότι χωρὶς κοινοῦ δόγματος λεηλατοῦσι καὶ πορθοῦσι πάντας, οὐκ ἀμυνεῖσθαι τοὺς ἀδικουμένους, ἔαν δ' ἀμύνωνται, νομισθήσεσθαι τούτους κατάρχειν τοῦ πολέμου, πάντων αὐτοὺς εὐηθεστάτους εἶναι.

² Thuc. iv. 98.

³ Polyb. xviii. 13 and 14.—See, at greater length, *supra*, pp. 30 *seq.*

⁴ Cf. such continental writers as Lueder, in Holtzendorff's *Handbuch des Völkerrechts*, vol. iv. pp. 254-257; Ullmann, *Völkerrecht*, § 144; Liszt, *Das Völkerrecht systematisch dargestellt* (1904), § 39; Rivier, *Principes du droit des gens*, vol. ii. p. 242.

the object of the war, all regulative limitations might be deliberately rejected, and the *rigor belli* introduced.¹

Among the Greeks there was a general desire for peace ; but its systematic and constant cultivation was seriously hampered, if not rendered impossible, by the existence of so many small and independent States in close proximity to each other, by their invincible spirit of emulation, by their mutual jealousy and suspiciousness, and, above all, by the lack of settled national occupations of an economic or industrial character, which would—as is the case in modern times—forcibly counteract tendencies to rush to arms. Still, if hostilities proved inevitable in Hellas, much was done to humanize warfare, and to remove from it the terrible atrocities and the unquenchable blood-thirstiness which prevailed amongst most of the nations of antiquity.

Efforts to humanize war in Greece.

The oracle of Delphi usually exerted a powerful influence for good. Thus, it refused to listen to the Milesians, as they had not duly expiated the excesses committed in their civil wars, though it responded to all others, even to barbarians, who consulted it.² “C’était comme l’excommunication du paganisme,” comments Laurent.³ After the defeat of the Cyprians by the Persians, Onesilus, who had led the revolt of the former, was killed, his head cut off, and hung over the gates of Amathus, a city he had besieged. The Amathusians, however, were commanded by the oracle to take down the head and bury it, and, as an atonement for their offence, to sacrifice annually to Onesilus, as to a hero,—. . . τὴν μὲν κεφαλὴν κατελόντας θάψαι, Ὀνησίλω δὲ θύειν ὡς ἥρωϊ ἀνὰ πᾶν ἔτος.⁴ In open conflicts between Greek communities, the intervention of the Delphian

Influence of the Delphian oracle.

¹ Cf. the present writer's *Studies in International Law* (London, 1908), pp. 99-102.

² Athenaeus, xii. 26 : διόπερ ὁ θεὸς ἐπὶ πολὺν χρόνον ἀπήλυνεν αὐτοὺς τοῦ μαντείου καὶ ἐπερωτῶντων διὰ τίνα αἰτίαν ἀπελαύνονται εἶπεν.

³ *Op. cit.* vol. ii. p. 135.

⁴ Herodot. v. 114.

god had invariably salutary results. In 435 B.C. the Epidamnians, in conformity with the answer of the Delphian god, delivered up their city to Corinth and placed themselves under her protection, when their immediate mother-city, Corcyra (itself a Corinthian colony), rejected their appeal for aid.¹ The same year, as it has already been mentioned in another connection, the Corcyraeans offered to refer a territorial dispute with Corinth to the oracle at Delphi.² The Athenians having expelled the Delians from their (the latter's) country, 422 B.C., on account of an alleged ancient offence against the sacred character of Delos, restored them the following year, by the command of the oracle.³ Pausanias relates⁴ that Callippus, an Athenian competitor in the pentathlum (the contest of the five exercises), bribed his antagonists; whereupon the Eleans imposed a fine on all who were concerned in this act of corruption. The Eleans refusing to remit the fine, the Athenians treated them contemptuously, neither paying the money nor attending the games. Hence the god at Delphi declared he would not grant them any oracle until the fine was paid; and then the Athenians gave way. In reference to this event, Brouwer points out—though more forcible instances could be adduced in support of his statement—the beneficial influence exerted by the oracle on politics, international law, the comity of nations, and respect for judicial decisions: “Ce fait prouve, ce me semble, que l'oracle de Delphes exerçoit une influence salutaire sur la politique, qu'il faisoit respecter le droit des gens et qu'il contribuoit efficacement à resserrer le lien qui unissoit les républiques de la Grèce, en forçant les nations les plus puissantes à se soumettre à la décision des juges dans les jeux publics, décision regardée de tout temps comme sainte et inviolable. . . . En général on étoit persuadé que les oracles, et surtout celui de

¹ Thuc. i. 25.

² Thuc. i. 28.

³ Thuc. v. 1, 32; Diodor. xii. 77.

⁴ v. 21. 3.

Delphes, n'avoient d'autres vues que celles d'avancer et de consolider le bonheur, la tranquillité et l'indépendance de la Grèce."¹

Honour and respect were paid to poets, philosophers, artists, and men of intellectual distinction in general, even though they became invested with enemy character on the outbreak of war. When in 335 B.C. Alexander destroyed Thebes, he left Pindar's house uninjured, and also honoured the poet's descendants.² After the disastrous Sicilian expedition, 413 B.C., many Athenian prisoners won the affection and pity of their Syracusan conquerors by reciting to them portions of the plays of Euripides.³

Then, again, we find the practice of neutralizing cities and protecting them from the ravages of war. The obligations of neutrality generally were by no means unknown or repudiated. Temples, and priests, and embassies were considered inviolable. The right of sanctuary was universally recognized. Mercy was shown to suppliants and helpless captives. Prisoners were ransomed and exchanged. Safe-conducts were granted and respected. Truces and armistices were established and, for the most part, faithfully observed. Solemn oaths were fulfilled. Burial of dead was permitted; and graves were unmolested. It was considered wrong and impious to cut off or poison the enemy's water supply, or to make use of poisoned weapons. Treacherous stratagems of every description were condemned as being contrary to civilized warfare. And with respect to all these relaxations (which will be shortly considered in greater detail), it is essential to emphasize again that the non-existence of the law and of universally accepted custom relating to them is not

¹ P. van Limburg Brouwer, *Histoire de la civilisation morale et religieuse des Grecs*, 8 tom. (Groningue, 1833-1842), vol. iv. pp. 158, 161.—Cf. Herodot. i. 157-159, as to the story of the surrender by the Cymaeans of Pactyas, a suppliant, who was pursued by the Persians; see vol. i. p. 359.

² Aelian. *Var. hist.* xiii. 7.

³ Cf. Plut. *Nic.* 29.

necessarily proved when we point here and there to conduct of a contrary nature. Caprice and passion may occasionally appear prominent in these or those international transactions. But, as a rule—and notwithstanding numerous exceptions that can easily be elicited—the Athenians, as Plutarch observes (and the same may be truly said of most other Greek communities), showed humanity and pity to their enemy, . . . ὁ Ἀθηναίων εὐκίνητος ἐστὶ πρὸς ὀργήν, εὐμετάθετος πρὸς ἔλεον. . . .¹

Influence of
contemporary
thinkers.

From time to time, poets and philosophers, orators and historians proclaimed humane doctrines. Plato constructed his ideal republic on the basis of what he conceived to be perfect justice; and although this conception was concerned more directly with national organization and internal affairs, external relationships were naturally involved also. Aristotle condemned the principle of retaliation as being antagonistic to true justice. Euripides even speaks of excesses in war not only as acts of intrinsic wickedness and transgressions against universal law, but, indeed, as suicidal folly on the part of the offender. “But foolish is the mortal,” declares Poseidon, “who lays waste cities, temples, and tombs, the sanctuaries of the dead; for having consigned them to solitude, he is wont himself to perish afterwards” —

μῶρος δὲ θνητῶν ὅστις ἐκπορθεῖ πόλεις,
ναοὺς τε τύμβους θ' ἱερὰ τῶν κεκμηκότων,
ἐρημία δὸς αὐτὸς ὄλεθ' ὕστερον.²

And, similarly, Diodorus observes that every war, even when prosecuted in such a manner as to offend against human law and equity, has nevertheless laws of some kind, such as, for example, not to violate truces, not to take the life of heralds, and not to injure suppliants who have thrown themselves on the mercy of their victors,—

¹ *Praecep. ger. reip.* iii. 4.—In Athens, Ἐλεος (pity, mercy) was worshipped (cf. Schol. Soph. *Oedip. Colon.* 261).

² *Troad.* 95-97.

πάς γὰρ πόλεμος ἐκβεβηκὼς τὰ νόμιμα καὶ δίκαια τῶν ἀνθρώπων, ὅμως ἔχει τινὰς ἰδίους καταπερεὶ νόμους, οἷον ἀνοχὰς μὴ λύειν, κήρυκα μὴ ἀναιρεῖν, τὸν τὸ σῶμα αὐτοῦ πρὸς τὴν τοῦ κατισχύοντος πίστιν τιμωρεῖσθαι.¹

The methods of Roman warfare indicate a distinct advance on that of the Greeks, and of all other ancient nations. On the whole, we perceive further mitigations, and more deliberate attempts to regularize belligerent proceedings, and a greater disposition to insist on and appeal to the sanctions of positive law, apart from those of sacred law.

General war
practice of
Rome.

But Roman practice assumed somewhat different forms at different epochs, and under different circumstances; so that sometimes we find writers passing a severe censure on the Romans for their disregard of law and justice, at other times they are highly eulogized for their strict observance of juridical principles and of the behests of humanity and fairness. Thus Albericus Gentilis is enabled to produce two parallel dissertations, —one (*De iustitia bellica Romanorum*) dealing with Roman warlike operations characterized by justice, the other (*De iniustitia bellica Romanorum*) setting forth acts of injustice.² The later period of Roman history is marked by a different policy from that which obtained in the earlier epoch, and the attitude towards foreign peoples has undergone a fundamental modification. A federal system was gradually established, securing hegemony to Rome, and allotting a pseudo-autonomy to her allies; and this condition of things steadily and surely developed into Roman supremacy and empire. In the earlier period, greater respect was paid to religion, public and private morality, and simplicity of life was more zealously cultivated; but the later epoch witnessed a remarkable deterioration in these respects. Imperial

Different
periods to be
distinguished.

¹ Diodor. xxx. 18. 2.

² Cf. *De jure belli* (Hanoviae, 1612); after which treatise is found *De armis romanis*, of which Bk. i. deals with "De iniustitia bellica Romanorum," and Bk. ii. with "De iustitia bellica Romanorum."

expansion fostered, and, in turn, was itself stimulated by, the lust of wealth and luxury; and to attain the objects desired, little regard was paid to the nature and legitimacy of the means adopted. Accordingly, the wars of this time were often marked by extreme cruelty and destruction; and the vaunted fetial law of old was deprived of its vital substance, and became well-nigh a mere mask.¹ And yet, in many instances the *ius belli et pacis*, the *ius fetiale*, the *ius gentium* exercised due sovereignty, regulated many matters in actual practice, imposed obligations, even such as were not directly advantageous to the Roman government and foreign policy, and enforced restrictions on the conduct of the legions in the field.

Practices varied both in the earlier and in the later period.

The earlier wars of Rome were occasionally characterized by atrocious proceedings;—for then it was rather a question of self-defence and self-preservation, whilst in the later wars, the main object was territorial aggrandizement and universal rule, her own safety already being assured. In the war against the Auruncians, 503 B.C., quarter was refused, prisoners indiscriminately slaughtered, and unbridled ferocity was shown both during the conflict and after the fight was ended,—“*nec magis post proelium quam in proelio caedibus temperatum est; et caesi aliquanto plures erant quam capti, et captos passim trucidaverunt.*”² Later in the Punic war no quarter was given to the Carthaginians,³—though as regards cruelty Carthaginian usages far surpassed those of Rome. Again, in the war with the Samnites, 320 B.C., Livy relates that the Romans slew without distinction those who offered resistance and those who fled, those who were armed and those who were defenceless, freemen and slaves, young and old, men and cattle,—“*. . . caedunt pariter*

¹ Cf. Lactantius, *Divinarum Institutionum libri vii.* (Ed. Migne), vi. 9: “Quantum a iustitia recedat utilitas, populus Romanus docet, qui per fetiales bello indicendo et legitime iniurias faciendo, semper aliena cupiendo atque rapiendo, possessionem sibi totius orbis comparavit.”

² Liv. ii. 16.

³ Liv. xxx. 6.

resistentes fusosque, inermes atque armatos, servos, liberos, puberes, impubes, homines iumentaue.”¹ The proceedings in general are represented by the Roman historian’s declaration that there were certain rights of war which it was just to exercise, or to endure; that such acts as the burning of crops, the demolition of houses, the carrying off of men and cattle as spoil were misfortunes to be borne rather than misdeeds to complain of,—“esse enim quaedam belli iura, quae ut facere, ita pati sit fas: sata exuri, dirui tecta, praedas hominum pecorumque agi, misera magis quam indigna patienti esse.”² In the case of towns taken by assault, the leaders, and occasionally all the male defenders, were put to the sword, and the remaining inhabitants sold as slaves, ‘sub corona.’³ Thus in 502 B.C. the Auruncians surrendered, even before Pometia had been stormed by the Romans; and, says Livy, though the town had capitulated, the leading men were indiscriminately beheaded, with no less cruelty than if the town had been taken by assault; the others, who were colonists, were sold by auction, the town was razed, and the land sold.⁴ In 353 B.C. in the war against the Tiburtians and the Tarquinians, rigorous severity, “acerbe saevitum,” was practised against the latter, in revenge for their having slaughtered Romans in the forum of Tarquinii. Out of a large number of prisoners, those of highest rank were sent to Rome, where they were beaten with rods, and beheaded in the forum; the others were there and then put to the sword.⁵ As to the severity of the initial onslaught on a town, Polybius says it was a custom sometimes adopted for the purpose of striking terror, ποιεῖν δὲ μοι δοκοῦσι τοῦτο καταπλήξεως χάριν.⁶ Thus he relates that in the attack on Carthagera, 209

¹ Liv. ix. 14.² Liv. xxxi. 30.³ Liv. ii. 17; vi. 10; vii. 19; ix. 31.⁴ Liv. ii. 17: “Ceterum nihilo minus foede dedita urbe, quam si capta foret, Aurunci passim principes securi percussi, sub corona venierunt coloni alii; oppidum dirutum; ager veniit.”⁵ Liv. vii. 19.⁶ Polyb. x. 15.

b.c., when Scipio thought that a sufficient number of troops had entered the town, he permitted most of them to attack the inhabitants, according to the Roman custom, with orders to put everybody to death and not to spare any one ; though they were not to commence looting before the order was given.¹

Treatment of
surrendered
towns.

When a besieged town voluntarily surrendered, the armed opponents were often enslaved.² Thus, the Volscians having been compelled to surrender, 430 b.c., all the prisoners were put up for sale, except those of senatorial rank.³ After the Veientians had laid down their arms, 425 b.c., their city and camp were plundered, one captive allotted to each Roman horseman and centurion, and two to each of those who had specially distinguished themselves, and the rest were sold by auction.⁴ Similarly, in 173 b.c., the praetor, Lucretius, compelled the surrender of Haliartus in Boeotia, and a large number of prisoners were sold.⁵

Severe action
in later times.

Particularly severe treatment was inflicted on rebels and deserters. Hostages were put to the sword, if their countrymen violated their oaths, or any solemn engagement entered into with the Romans. In the later wars, also, as, for example, under the emperors, the Romans at times dishonoured their triumphs by butchering in cold blood conquered kings and generals. And examples are not wanting of the exile of entire peoples, to render them incapable of doing any injury. Thus, Cornelius and Baebius, the consuls, after consultation with the senate, drove into exile twelve thousand Ligurians who had surrendered, 182 b.c.;⁶ and Fulvius banished seven thousand Apuan Ligurians to Samnium.⁷ At the end of the Republic Roman arms were directed against nations with undiminished rigour. Marius is said to have observed to Mithridates, king of

¹ Polyb. x. 15.

² Liv. iv. 29, 34 ; v. 22 ; xxvii. 19 ; xlii. 63.

³ Liv. iv. 29 : "castrisque et his captis hostes praeter senatores omnes venundati sunt."

⁴ Liv. iv. 34.

⁵ Liv. xlii. 63.

⁶ Liv. xl. 38.

⁷ Liv. xl. 41.

Pontus: "Prove yourself, O king, more powerful than the Romans, or yield without murmuring to their commands." Ἡ μείζων, ὦ βασιλεῦ, πειρῶ δύνασθαι Ῥωμαίων, ἢ ποίει σιωπῇ τὸ προστασσόμενον.¹ But the harshness of this observation was as nothing compared with the conduct of the king, in causing a general massacre in Asia Minor of the Roman peaceful residents, numbering several thousands (93 B.C.). At other times, Roman conduct was likewise severe; for example, Germanicus in his wars in Germany committed many acts of cruelty,² and Titus and Vespasian were guilty of numerous atrocities in their onslaughts on the Jews.³

Still, the Romans can by no means be justly accused of uniformly unrestrained cruelty. Their practices varied according as their wars were commenced to exact vengeance for gross violations of international law, or for deliberate acts of treachery. Their warlike usages varied also according as their adversaries were regular enemies—'iusti hostes,' 'perduelles,'—or uncivilized barbarians and bands of pirates and marauders. The pirate, says Cicero, is not recognized as a public enemy; he is the common foe of mankind generally,—"*nam pirata non est perduellium definitus, sed communis hostis omnium.*"⁴ Then, again, at the same epoch we find one Roman general abusing what he conceives to be the rights against an enemy of his country, or what he claims to be the privileges that victory is supposed to confer on him; and, on the other hand, we find another commander acting with justice, with self-restraint, with conspicuous clemency. Thus, examples of Brutus' mild proceedings are related.⁵ Caesar, who encountered

Certain mitigations in Roman warfare.

¹ Plut. *Caius Marius*, 31.

² Tacit. *Ann.* ii. 21.

³ Josephus, *De bell. Jud.* (*passim*).

⁴ Cic. *De offic.* iii. 107.

⁵ Plut. *Brut.* i. 29, 31; Appian, *Bell. civ.* iv. 123.—Cf. Cic. *Ad Fam.* ix. 14, whose description (in his letter to Dolabella, 44 B.C.) of the gentleness and sincerity of the disposition of Brutus could equally well apply to his conduct towards public enemies;—"semper amavi, ut scis, M. Brutum propter eius summum ingenium, suavissimos mores, singularem probitatem atque constantiam."

many belligerent peoples in Italy, Spain, Gaul, and Britain, is described by Cicero, his political enemy, as possessing a mild and clement nature, "mitis clemens-que natura";¹ and Suetonius speaks of him in similar terms, "natura lenissimus."² Not infrequently did he set prisoners of war at liberty. "You are not mistaken about me," Caesar wrote to Cicero, "nothing is further from my nature than cruelty. . . . I am told that some prisoners I set free seize the first opportunity to take up arms against me; nevertheless, I shall not renounce my policy."³ On several occasions he might well have availed himself of the usually admitted rights of the conqueror, when he merely demanded that the defeated enemy should be disbanded.⁴ In spite of Massilia's defection and violation of a truce, he spared the city, and allowed it to retain its independence, 49 B.C.⁵ And Germanicus is also praised by Tacitus for frequently adopting mild usages against his German opponents. Indeed, the Roman conduct far transcended in its civilized and humane character that of the German leader, Arminius, who is reported to have burnt to death and otherwise barbarously slain the centurions and tribunes of the Varian legions, and nailed their skulls to trees.⁶

¹ *Ad Fam.* vi. 6.—Cf. *Pro Marcell.* 6; *Pro Sext.* 63; *Pro Deiot.* 12.

² Sueton. *Caes.* 74.

³ Cic. *Ad Attic.* ix. 16: "Recte auguraris de me—bene enim tibi cognitus sum—nihil a me abesse longius crudelitate. . . . neque illud me movet, quod ii, qui a me dimissi sunt, discessisse dicuntur, ut mihi rursus bellum inferrent; nihil enim malo quam et me mei similem esse et illos sui."

⁴ *Caes. Bell. civ.* i. 72-86; *Plut. Caes.* 36; *Pomp.* 65; *Dion Cass.* xli. 20-23; *Appian, Bell. civ.* ii. 42 *seq.*; *Florus*, iv. 2.

⁵ *Caes. Bell. civ.* ii. 12, 13, 14, 22.

⁶ *Tacit. Ann.* i. 61: "medio campi albertia ossa, ut fugerant, ut restiterant, disiecta vel aggerata. adiacebant fragmina telorum equorumque artus, simul truncis arborum antefixa ora. lucis propinquis barbarae arae, apud quas tribunos ac primorum ordinum centuriones mactaverant."

Undoubtedly, the belligerent operations of Rome, from the point of view of introducing various mitigations in the field, and adopting a milder policy after victory, are distinctly of a progressive character. They were more regular and disciplined than those of any other ancient nation. They did not as a rule degenerate into indiscriminate slaughter, and unrestrained devastation. The attainment of the essential object of the war was aimed at, without any lawless abandonment to capricious fury and passion. The Roman advance on the warlike usages even of the artistic and intellectual Greeks is apparent.¹ The sanctions of Roman jurisprudence and the submission to the fundamental principles of justice proved more effective in matters of interstatal relationships than the beautiful dreams of Greek philosophy and the speculative elaborations of moral and political ideals. Polybius, who had a profound knowledge of the Romans as well as of the Greeks, observed (in connection with the embassy of Callicrates to Rome to plead on behalf of the Achaean league, 180-179 B.C.) that the Romans, possessing the feelings of men and animated by a noble spirit and generous principles, commiserated those who were oppressed by misfortunes, and showed favour to all who flew to them for protection.² The Romans, again, were the first to rationalize military organization, and to provide for the regular enrolment of troops, which were used not for the lupine plunder of their victims, or for their own individual enrichment, but for the cause of the State. The sanctions of the *ius*

Roman usages
of a progressive
character.

¹ Cf. Laurent, *op. cit.* vol. iii. pp. 4-5 : "Les Grecs mettaient dans leurs querelles toute la fureur des guerres civiles ; ils trouvaient plus de jouissance à devaster, à tuer qu'à dominer. Rome qui songe à conquérir le monde et à exploiter les vaincus, a pour cela même des vues conservatrices ; sa clémence est du calcul, mais toujours est-il que ses conquêtes ne sont pas souillées par ces atrocités qui font de la guerre du Péloponnèse un des spectacles les plus affreux de l'histoire."

² Polyb. xxiv. 12 : 'Ρωμαῖοι ὄντες ἄνθρωποι καὶ ψυχῇ χρώμενοι λαμπρᾷ καὶ προαιρέσει καλῇ, πάντας μὲν ἐλεοῦσι τοὺς ἑπταικότας καὶ πᾶσι πειρῶνται χαρίζεσθαι τοῖς καταφεύγουσιν ὡς αὐτούς.

sacrum, apart from those of positive law, also operated in the law of war. The existence of a just and adequate cause as a material condition, and a solemn public declaration as a formal condition were necessary to render a contemplated war legitimate. A fully considered resolution of the senate and the people was indispensable. Without that, and without a proper declaration, the Romans regarded hostilities as mere plundering excursions. Thus after the great victory over Antiochus at Magnesia, 190 B.C., the Roman government proceeded to regulate the affairs of Asia Minor and of Greece. Some of the more distant allies of Antiochus, such as the Phrygians, the Cappadocians, the Paphlagonians, together with the Celts of Asia Minor, who had been the king's mercenaries, delayed their submission. Hence this fact afforded a pretext to Gnaeus Manlius Volso (who relieved Lucius Scipio of his command in 189 B.C.) for asserting the Roman protectorate over the Hellenes in Asia, as had already been done in Spain and Gaul. But when these proceedings came to be discussed in the senate, on the occasion of the commander's request for a triumph, many members failed to see any just ground or object of the war. Gnaeus Manlius was therefore severely censured for making a predatory expedition on his own account, and not regular war on behalf of the Roman people in accordance with the law of nations.¹ "Do you wish, then," concluded his censors, "that all these rites should be dishonoured and trampled upon, that the fetial laws be abrogated, that the fetial institution should be abolished? Is it your intention that religion—the gods pardon the expression!—should be cast aside, and the gods themselves consigned to oblivion? Do you also deem it fit that the senate should not be consulted with regard to war, that the people should not be asked

¹ Liv. xxxviii. 45: "cum ibi nullam belli causam inveniret quiescentibus regiis, circumegisse exercitum ad Gallograecos, cui nationi non ex senatus auctoritate, non populi iussu bellum illatum; quod quem umquam de sua sententia facere ausum?"

whether they choose and order war to be made on the Gauls?"¹

The *ius belli* imposed numerous restrictions on barbarism,² and condemned all acts of treachery. The story is related that a certain schoolmaster of Falerii, who had charge of the sons of the principal citizens of the town, took the opportunity, when walking with his pupils outside the walls, to lead them to the Roman camp, and throw them into the power of the enemy (393 B.C.). But Camillus indignant at this treason, ordered the boys to drive their master back to the town, and flog him all the way; and he declared that although such relationships as were established by compact did not exist between the Romans and the Faliscans, nevertheless there did exist, and ever would, those imposed by nature.³ There were, he pointed out, laws of war as well as peace, and the Romans had learnt to put them into practice not less justly than bravely,—“sunt et belli, sicut pacis, iura; iusteque ea, non minus quam fortiter, didicimus gerere.”⁴ Again, when Adgantestrius, the chief of the Chatti, made an offer to the senate to poison Arminius, he was at once informed that it was not by secret treachery, but openly by arms that the Romans proceeded against their enemies,—“responsum esse non fraude neque occultis, sed palam et armatum populum Romanum hostes suos ulcisci.”⁵ Tacitus adds that on this occasion Tiberius vied with the Roman generals of old, who had contemptuously rejected the suggested scheme of poisoning Pyrrhus (280 B.C.), and even delivered up the traitor (the king’s physician)

Restrictions
imposed by the
ius belli.

¹ Liv. xxxviii. 46: “Vultis ergo haec omnia pollui et confundi, tolli fetialia iura, nullos esse fetiales? Fiat (pace deum dixerim) iactura religionis; oblivio deorum capiat pectora vestra; num senatum quoque de bello consuli non placet? non ad populum ferri, velint iubeantne cum Gallis bellum geri?”

² Cic. *De offic.* i. 11.

³ Liv. v. 27: “nobis cum Faliscis, quae pacto fit humano, societas non est; quam ingeneravit natura utriusque est critque.”

⁴ *Ibid.*—Cf. Flor. i. 12.

⁵ Tacit. *Ann.* ii. 88.

who harboured that base design,—“qua gloria aequabat se Tiberius priscis imperatoribus qui venenum in Pyrrhum regem vetuerant prodiderantque.”¹ Thus, observes Cicero, the Romans refused to countenance a criminal attempt made on the life of even a powerful foreign aggressor.²

Condemnation
of breach of
faith.

Breach of faith, even when pledged to the enemy under compulsion, was ever considered by the Romans grossly criminal and impious. Pyrrhus, in return for the Roman generosity in disclosing the design against him, allowed his prisoners to go to Rome on parole in order to celebrate the Saturnalia; after which they faithfully returned. In this connection Cicero formulates the principle that if individuals even under stress of circumstances have made a promise to an enemy, they are none the less bound to keep their word,—“si quid singuli temporibus adducti hosti promiserunt, est in eo ipso fides conservanda.”³ And he refers to the example of Regulus who, having been captured by the Carthaginians in the first Punic war, was allowed to go to Rome on parole to negotiate the exchange of prisoners of war; and, advising the senate not to give up the prisoners, returned to his punishment, in spite of his friends' dissuasions.⁴

Observance of
prescribed
practices.

The various proceedings preliminary to the formal proclamation of war were carefully adhered to by Rome, even when they had more or less fallen into desuetude amongst other peoples. The Greeks had frequently exercised reprisals instead of making a regular declaration of war; for example, the Eleutherans suspecting that the Rhodian admiral had illegitimately put to death one

¹ Tacit. *Ann.* ii. 88.—Cf. Val. Max. vi. 5.—The letter written by Fabricius, the consul, to Pyrrhus, warning him against the treacherous design is recorded by Plutarch (*Pyrrhus*).

² Cic. *De offic.* iii. 22: “Ita ne hostis quidem et potentis et bellum ultro inferentis interitum cum scelere approbavit.”

³ *Ibid.*—Cf. Publius Syrus, *Sententiae*: “Etiam hosti est aequus, qui habet in consilio fidem.”

⁴ *De offic.* iii. 22.

of their citizens, proclaimed a state of reprisals before declaring open war upon Rhodes.¹ The Romans regularly granted truces, and faithfully observed their conditions. They rarely resorted to ambushes and underhand stratagems. And so on with many other mitigations of warfare (several of which will be considered below), including all those that had been introduced by the Greeks.

¹ Polyb. ii. 58: τὸ μὲν πρῶτον ῥύσια κατήγγειλαν τοῖς Ῥοδίοις, μετὰ δὲ ταῦτα πόλεμον ἐξήνεγκαν.

CHAPTER XXIV

WAR: ENEMY PROPERTY—PERSON OF THE ENEMY— PRISONERS

General
claims of the
victor.

It was usually held, in accordance with more rigorous conceptions, that the right of the conqueror over the conquered was absolute; and this theory was not rarely carried out in practice. The victor, assisted by his gods, when he did not exterminate his opponents in a war of unmitigated vengeance, sometimes claimed the power to deprive them not only of their political independence, but also of their religion and their gods.¹ But less stern measures frequently prevailed amongst the Greeks, especially so in the case of wars between Hellenic communities; and more humane doctrines were advanced in many quarters. Thus the Lacedaemonians on one occasion pointed out to the Athenians the injustice and unwisdom of so taking advantage of victory or superiority as to impose extremely unfavourable conditions on those in their power, and that a belligerent triumph, if used with moderation and generosity, would be productive of far greater benefit to both parties alike.² And in the same way Polybius

¹ Cf. Eurip. *Troad.* 25-7 (Poseidon speaks):

λείπω τὸ κλεινὸν Ἴλιον βωμούς τ' ἐμούς·
ἐρημία γὰρ πόλιν ὅταν λάβῃ κακῇ,
νοσεῖ τὰ τῶν θεῶν οὐδὲ τιμᾶσθαι θέλει.

(I am quitting renowned Ilium and my own altars; for when evil devastation seizes upon a city, the affairs of the gods are in a sickly state, nor are they wont to be respected).

² Thuc. iv. 19.—Cf. *supra*, p. 194.

remarks, in reference to Philip's acts of plunder and sacrilege at Thermus, 218 B.C., that to overcome one's enemies in integrity and equity is, indeed, of greater, and not of less, practical advantage than victories in the field.¹ The customary policy of the Romans, however, consequent on their decisive victory over a nation, was that of pacification, 'dare pacem,' 'paci condiciones dicere,' implying the assertion of Roman sovereignty, 'imperium.' Thus in the case of the Volscians, 442 B.C., Marcus Geganius, the consul, ordered that they should deliver up their general, lay down their arms, acknowledge themselves vanquished, and be ready to submit to his further orders,—“dedi imperatorem, arma poni iubet, fatentes victos se esse et imperio parere.”² Scipio, addressing Massinissa, said that Syphax, king of the Massaesylians, having been subdued and captured under the auspices of the Roman people, therefore he himself, his queen, his kingdom, his territories, his towns, and his subjects, in a word everything that belonged to him became the booty of the Roman people.³ This doctrine was likewise emphasized by Menippus, an envoy from Antiochus, 193 B.C., who, expatiating on the different kinds of treaties it was possible to conclude, said that the first class included those which dictated terms to a nation vanquished in war; since the victor, to whom their possessions have been surrendered, has the sole power of deciding what portion of them the conquered may hold, and of what they shall be deprived.⁴ From this asserted general right of *imperium* over the conquered people would follow the more

¹ Polyb. v. 12 : καὶ μὴν τό γε νικῆσαι τοὺς πολεμίους καλοκαγαθία καὶ τοῖς δικάοις οὐκ ἐλάττω, μείζω δὲ παρέχεται χρεῖαν τῶν ἐν τοῖς ὄπλοις κατορθωμάτων.

² Liv. iv. 10.—Cf. xxvi. 32 ; xxx. 37.

³ Liv. xxx. 14 : “Syphax populi Romani auspiciis victus captusque est. itaque ipse, coniunx, regnum, ager et oppida, homines qui incolunt, quidquid denique Syphacis fuit, praeda populi Romani est. . . .”

⁴ Liv. xxxiv. 57 (for which see *supra*, pp. 46-47).—Cf. xxxvii. 37 ; xxxix. 37.

particular right of punishing them, that of inflicting a fine on them in money or in kind,¹ or the claim to exercise extreme rigour, 'ius saevienti,' and the unrestricted right of dealing with the defeated enemy's property.

Rights of
occupation—
Greece.

According to the rigid Greek theory, warlike occupation was a natural means of acquiring property. Thus Aristotle in his discussion of property as resting on a physical basis, and of the enslavement of those whom nature intended to be slaves, says that from one point of view war is a natural art of acquisition,—διὸ καὶ ἡ πολεμικὴ φύσει κτητικὴ πως ἔσται. . . .² As the acquisition of immovable property there was at no time any doubt in actual practice. After Athens conquered the Chalcidians, a certain part of their territory was portioned out in two thousand lots and given to colonists; another part was consecrated to Athens, and the rest was let out.³ About 470 B.C. the Athenians took an island in the Aegean inhabited by Dolopes, and colonized it.⁴ In 427 B.C. they razed the walls of the Mitylenaeans, took away their fleet, divided the whole island, exclusive of the territory of Methymna, into three thousand portions, of which they dedicated three hundred to the gods, and let out the rest to Athenian cleruchi; and, further, the towns which the Mitylenaeans held on the continent were seized and subjected to the conquerors.⁵ Similarly, the Lacedaemonians converted the Plataean territory into public land, and let it out for terms of ten years.⁶ Xenophon relates

Immovable
property.

¹ Liv. xxxiii. 29; xxxvii. 2.

² *Polit.* i. 8. 12.

³ Aelian. *Hist. var.* vi. 1: 'Ἀθηναῖοι, κρατήσαντες Χαλκιδέων, κατεκληροῦχθησαν αὐτῶν τὴν γῆν εἰς δισχιλίους κλήρους, τὴν Ἰππόβοτον καλουμένην χώραν . . . τὴν δὲ λοιπὴν ἐμίσθωσαν. . . .—Cf. P. Guiraud, *La propriété foncière en Grèce* . . . (Paris, 1893), liv. ii. chap. v.: "Du droit de propriété dans ses rapports avec l'État," pp. 196 *seq.*

⁴ Thuc. i. 98.

⁵ Thuc. iii. 50.

⁶ Thuc. iii. 68: τὴν δὲ γῆν δημοσιώσαντες ἀπεμίσθωσαν ἐπὶ δέκα ἔτη. . . .

that in the opinion of Cyrus it was a perpetual law amongst men that when a city was taken from the adversary, both the persons and the property of the inhabitants belonged to the captors, that such possession was acquired justly, and that to permit the enemy to retain anything was due rather to benevolence than to law,—νόμος γὰρ ἐν πᾶσιν ἀνθρώποις ἀϊδίος ἐστίν, ὅταν πολεμούντων πόλις ἀλφῶ, τῶν ἐλόντων εἶναι καὶ τὰ σώματα τῶν ἐν τῇ πόλει καὶ τὰ χρήματα. οὐκ οὐκ ἀδικία γε ἔξετε ὅ, τι ἂν ἔχητε, ἀλλὰ φιλανθρωπία οὐκ ἀφαιρήσεσθε, ἣν τι εἴτε ἔχειν αὐτούς.¹

As to movables, no distinct regulations appear to have been laid down regarding the respective rights of the conquering State itself or its citizens who first gained possession thereof. Usually, however, everything acquired by the united efforts of the army (that is, practically the whole of the adult able-bodied male citizens) or of a division of the army, and not by the separate enterprise or exploits of particular individuals, was considered collective booty. One-tenth of this was, as a rule, devoted to the gods,² another portion to the State, and the remainder shared out amongst all, but not necessarily in equal parts. Herodotus relates that after the battle of Plataea, Pausanias made proclamation that no one should touch the booty; he then ordered the helots to collect the treasures, of which one tithe was allotted to the god at Delphi, another to the Olympian god, and a third to the god at the Isthmus, and the rest was divided according to title and merit. An additional reward, ἀριστεῖον, was also given to those who particularly distinguished themselves, and a special portion reserved for Pausanias.³ In 426 B.C. when Ambracia was reduced by the Acarnanians, with the help of the Athenians under Demosthenes, a

Movable
property.

A portion
consecrated by
the Greeks to
the gods.

¹ Xenoph. *Cyrop.* vii. 5. 73.

² Xenoph. *Hellen.* iv. 3. 21: καὶ οὕτω δὴ αἶ τε σπονδαὶ γίνονται καὶ Ἀγησίλαος μὲν εἰς Δελφοὺς ἀφικόμενος δεκάτην τῶν ἐκ τῆν λείας τῷ θεῷ ἀπέθυσεν.—Cf. *ibid.* iii. 3. 1.

³ Herodot. ix. 80, 81.

third part of the spoils was assigned to Athens, three hundred panoplies to Demosthenes, and the remainder divided by the Acarnanians among their cities.¹

Such practice
rare in Rome.

In the case of Rome, the devotion as a divine offering of a portion of the spoils taken in war was a very uncommon practice. In 396 B.C. the dictator, Camillus, before attacking Veii, pronounced a solemn invocation in which he promised the Pythian Apollo one-tenth of the booty—"decimam partem praedae"—that might eventually fall to the Romans.² And this, as Niebuhr has pointed out, appears to be the only recorded Roman instance of the practice, which was so common with the Greeks.

Sale of booty.

Frequently the spoils (λάφυρα, later λάφυρον) taken by the Greeks were publicly sold to the followers of the army, who showed themselves to be keen purchasers. The Spartans exercised special care in the holding of such public sales, of which certain individuals, λαφυροπῶλαι, had charge.³ Prisoners were also included in these sales. It appears there were certain officials appointed for the purpose of estimating the value of the prisoners of war; but the exercise of this function was looked upon with contempt. Thus Hyperides reproaches Demades for having obtained the nomination of a certain person as a proxenus, who had acted as an assessor in the case of Olynthian prisoners.⁴

Advocacy of
milder
measures.

The advocacy of, and insistence on, milder treatment were by no means wanting. Thus, Plato drawing a distinction between war with the Hellenes and war with barbarians said that in the former case belligerents ought not to devastate the lands of Hellenes or burn their houses,—τιθῶμεν δὴ καὶ τοῦτον τὸν νόμον τοῖς φύλαξι, μήτε γῆν τέμνειν μήτε οἰκίας ἐμπιπράναι,⁵—and

¹ Thuc. iii. 114.—Cf. Herodot. viii. 11; viii. 123; Plut. *Alcib.* 7; Plato, *Symp.* 220 D.

² Liv. v. 21.

³ Xenoph. *Agés.* i. 18.

⁴ Hyperides (ed. Blass), xiv. 76: ὅτι ἀλούσης Ὀλύνθου τιμητῆς ἐγένετο τῶν αἰχμαλώτων.

⁵ *Rep.* v. 471.

that their enmity ought only to last until the many innocent sufferers have compelled the guilty few to give satisfaction.¹ Similarly, Polybius declares: "For my part I never concur with those who indulge their anger against men of their own blood to the length of not only depriving them of the year's harvest when at war with them, but even of cutting down their trees and destroying their buildings, and of leaving them no opportunity for repentance. Such proceedings seem to me to be rank folly."² And Cicero declares likewise that in reference to the destruction and spoliation of cities the combatants ought to avoid cruelty and recklessness,—“de evertendis autem diripiendisque urbibus valde considerandum est ne quid temere, ne quid crudeliter.”³

Generally speaking, a discrimination was made between the treatment of cities taken by assault, and those which voluntarily capitulated. Thus before the ratification of the peace of Nicias (422-421 B.C.), after a good deal of negotiation it was agreed that both parties should give up what they had gained by arms, but the Athenians were allowed to retain Nisaea; for when they demanded the restoration of Plataea the Thebans protested that they had obtained possession of it not by force or treachery but by agreement, to which the Athenians rejoined they had acquired Nisaea in the same way.⁴ When the Peloponnesians had before this laid siege to Plataea (427 B.C.), the Lacedaemonian commander desired that the place should be surrendered, and not stormed; for in case a treaty of peace were concluded, providing for the restoration by both parties

Stormed towns and capitulated towns—differences of treatment.

¹ *Ibid.*

² Polyb. xxiii. 15: οὐδέποτε δὲ ἐγὼ συντίθεμαι τὴν γνώμην τοῖς ἐπὶ τοσοῦτον διατιθεμένοις τὴν ὀργὴν εἰς τοὺς ὁμοφύλους ὥστε μὴ μόνον τοὺς ἐπετείους καρποὺς παραιρεῖσθαι τῶν πολεμίων, ἀλλὰ καὶ τὰ δένδρα καὶ τὰ κατεσκευασμένα διαφθεῖρειν, μηδὲ μεταμελείας καταλιπόντας τόπον. ἀλλὰ μοι δοκοῦσι μεγαλείως ἀγνοεῖν οἱ ταῦτα πράττοντες.

³ Cic. *De offic.* i. 24.

⁴ Thuc. v. 17.—Cf. iv. 69.

of all the places taken by assault, Plataea might be excepted on the ground that the inhabitants had come to terms on their own accord.¹

Towns taken
by storm.

Towns taken by assault were compelled to surrender usually on unconditional terms, *χρησθαι ὅτι ἂν βούλωνται*, and as a rule were treated with greater rigour than those which voluntarily yielded. The destruction of those capable of bearing arms, the reduction of the others to slavery, general plunder, and the establishment of a colony or garrison were the frequent practices which obtained in such a case.

But milder proceedings were by no means unknown in the event of cities being stormed. Thus Timotheus, the Athenian commander, after taking forcible possession of Corcyra did not reduce the inhabitants to slavery, nor did he expel them or deprive them of their own laws.² A Rhodian ambassador observed to an assembly of Aetolians at Heraclea (207 B.C.) that if they took a city he was sure they would not stoop to violate the freeborn or burn the buildings, as they considered such conduct cruel and barbarous.³ On several occasions Julius Caesar refrained from adopting the severe measures of the conqueror, and spared stormed cities, demanding mainly that the enemy army should be disbanded.

Towns
voluntarily
surrendered.

In the case, too, of voluntary capitulation the conditions (*ὁμολογία*) imposed were at times exceptionally rigorous. In 430 B.C., in the course of the Peloponnesian war, the Potidaeans were compelled through hunger to surrender to the Athenians. The Potidaeans with their wives and children, together with the foreign troops (Corinthians and others) had to come out of the city, armed with safe-conducts, the men with one

¹ Thuc. iii. 52.

² Xenoph. *Hellen.* v. 4. 64: οὐ μέντοι ἡνδραποδίσατο οὐδὲ ἄνδρας ἐφυγάδευσεν, οὐδὲ νόμους μετέστησεν.

³ Polyb. xi. 5: καὶ κυριεύσαντες μὲν αὐτοὶ πόλεως οὐτ' ἂν ὑβρίζειν ὑπομείναιτε τοὺς ἐλευθέρους οὐτ' ἐμπιμπράναι τὰς πόλεις, νομίζοντες ὡμὸν εἶναι τὸ τοιοῦτον καὶ βαρβαρικόν.—Cf. Liv. xxviii. 7.

garment, the women with two, and they were allowed a certain sum of money for their journey ; afterwards, the Athenians sent colonists of their own to the evacuated town.¹ And when the Samians being invested on all sides by Lysander treated about a capitulation just when he was proceeding to a general assault, the terms of surrender were that all the freemen should depart with only what clothes they had on their backs, and that they should deliver up everything else.²

When the inhabitants were not expelled, the victors often took possession of a portion of their territory.

In some cases a tribute was imposed, and the enemy disarmed. Thus, in 439 B.C., Samos after a long siege capitulated to Pericles. The Samians were obliged to give hostages, to pay a full indemnity by regular fixed instalments, to raze their fortifications to the ground, and deliver up their fleet,—*καὶ προσεχώρησαν ὁμολογία, τεῖχος τε καθελόντες καὶ ὁμήρους δόντες καὶ ναῦς παραδόντες, καὶ χρήματα τὰ ἀναλωθέντα κατὰ χρόνους ταξάμενοι ἀποδοῦναι.*³

In 424 B.C. Nisaea was besieged by the Athenians, and on account of imminent starvation capitulated. The conditions imposed were that the Nisaeans should go free, every man paying a fixed ransom and giving up his arms ; and that the Athenians should be free to deal as they pleased with the Lacedaemonian commander, and any of his fellow-citizens who were in the town.⁴

After the battle of Aegospotami, 405 B.C., the Athenians were obliged to pull down the fortifications of the Piraeus, and the long walls which connected the port

Tribute.

Ransom.

Citadels and vessels of war.

¹ Thuc. ii. 70 : ἐπὶ τοῖσδε ὄν ξυνέβησαν, ἐξελεθεῖν αὐτοὺς καὶ παῖδας καὶ γυναῖκας καὶ τοὺς ἐπικούρους ξὺν ἐνὶ ἱματίῳ, γυναῖκας δὲ ξὺν δυοῖν, καὶ ἀργυρίον τι ῥητὸν ἔχοντας ἐφόδιον.

² Xenoph. *Hellen.* ii. 3. 6 : ὁμολόγησαν ἐν ἱμάτιον ἔχων ἕκαστος ἀπίενα τῶν ἐλευθέρων, τὰ δ' ἄλλα παραδοῦναι.

³ Thuc. i. 117.

⁴ Thuc. iv. 69 : . . . ξυνέβησαν τοῖς Ἀθηναίοις ῥητοῦ μὲν ἕκαστον ἀργυρίου ἀπολυθῆναι, ὅπλα παραδόντας, τοῖς δὲ Λακεδαιμονίοις, τῷ τε ἄρχοντι καὶ εἴ τις ἄλλος ἐνῆν, χρῆσθαι Ἀθηναίους ὃ τι ἂν βούλωνται.

to the town, to give up to Lysander all war-vessels except twelve, to recall those who had been exiled (who had been considered the enemies of Athenian democracy), to change their constitution, and to enter into an offensive and defensive alliance with the Lacedaemonians whose hegemony they were to acknowledge.¹ The Corinthians, the Thebans, and others urged the entire destruction of the Athenians, but the victors declared they would not reduce to bondage a State which had done great good at the time of the greatest dangers that had ever befallen Greece. But some two centuries later, on the surrender of the citadel of Psophis to Philip, 218 B.C., the Psophidians descending from the citadel received back the possession of the town, each man recovering at the same time his own house.²

Pursuit of
enemy.

It is worthy of note that occasionally in open engagements in the field it was forbidden to pursue the enemy beyond the field of battle after the victory was gained; but the rule was adopted more particularly by the Spartans. This prohibition was due, in the opinion of Schömann, not so much to deliberate moderation and magnanimity as, on the one hand, to prudence—it being anticipated that the enemy, aware that his pursuit was not followed up, would thus seize the opportunity of leaving the field entirely,—and, on the other, to the fear that a continued pursuit and scramble for plunder would be detrimental to the strict Spartan discipline.³ In the fourteenth year of the Peloponnesian

¹ Xenoph. *Hellen.* ii. 2. 20 : Λακεδαιμόνιοι δὲ οὐκ ἔφασαν πόλιν Ἑλληνίδα ἀνδραποδιεῖν μέγα ἀγαθὸν εἰργασμένην ἐν τοῖς μεγίστοις κινδύνοις γενομένοις τῇ Ἑλλάδι, ἀλλ' ἐποιούντο εἰρήνην ἐφ' ᾧ τὰ τε μακρὰ τεῖχη καὶ τὸν Πειραιᾶ καθελόντας καὶ τὰς ναῦς πλὴν δώδεκα παραδόντας καὶ τοῖς φυγάδας καθέντας τὸν αὐτὸν ἔχθρον καὶ φίλον νομίζοντας Λακεδαιμονίοις ἔπεισθαι καὶ κατὰ γῆν καὶ κατὰ θάλατταν ὅποι ἂν ἠγῶνται.—Cf. Plut. *Lysand.* 14.

² Polyb. iv. 72 : . . . οἱ δὲ Ψωφίδιοι καταβάντες ἐκ τῆς ἄκρας ἐκομίσαντο τὴν πόλιν καὶ τὰς οἰκήσεις ἕκαστοι τὰς αὐτῶν . . .

³ Schömann, *Gr. Alter.* vol. i. p. 293 : “Nach dem gewonnenen Siege aber den fliehenden Feind weit zu verfolgen untersagte das Gesetz, weniger wohl aus Grossmuth als aus Klugheit, weil sich

war (418 B.C.) the Argives, assisted by the Athenians, were defeated by the Lacedaemonians at the battle of Mantinea. The pursuit, says Thucydides, was not fierce nor the fight prolonged; for the Lacedaemonians firmly retain their posts until they have routed the enemy, and having once defeated them, they do not follow them far or long.¹ Some two years before their defeat the Argives had induced the Lacedaemonians to conclude a fifty years' peace, on the understanding that neither party should challenge the other to fight for the disputed borderland of Cynuria, if they were not at the time suffering from war or plague; and, in the event of war, the conquered side was not to be pursued over its own border,—διώκειν δὲ μὴ ἐξείναι περαιτέρω τῶν πρὸς Ἄργος καὶ Λακεδαίμονα ὄρων.² The Lacedaemonians, adds Thucydides, at first considered this a foolish proposal, but anxious to obtain the friendship of Argos, they consented and drew up a written treaty embodying those proposals.

As to the *occupatio bellica* of the Romans, we find that it was for a long time the principal and commonest mode of acquiring property. In the earlier history of Rome, the right of property was regarded as being competent only to Roman citizens and their allies. Hence the possessions of strangers being outside the Roman world, the 'orbis Romanus,' were held to be *res nullius*, no one's property, and, on that account, could become the property of the first Roman occupant thereof. Later, the right to become the owner of alien

The Roman
conception of
*occupatio
bellica.*

voraussehen liess, der Feind werde sich um so eher entschliessen das Feld zu räumen, wenn er voraus wisse, dass er dann nicht hart verfolgt werden würde, und wohl weil bei weiter Verfolgung leicht Unordnung und daraus Gefahr für die Verfolger entstehen konnte."

¹ Thuc. v. 73 : οἱ γὰρ Λακεδαιμόνιοι μέχρι μὲν τοῦ τρέψαι χρονίους τὰς μάχας καὶ βεβαίους τῷ μένειν ποιοῦνται, τρέψαντες δὲ βραχείας καὶ οὐκ ἐπὶ πολὺ τὰς διώξεις.—Cf. Plut. *Lycurg.* 22 : τρεψάμενοι δὲ καὶ νικήσαντες ἐδίωκον, ὅσον ἐκβεβαίωσασθαι τὸ νίκημα τῇ φυγῇ τῶν πολεμίων. . . .

² Thuc. v. 41.

property by the mere act of taking possession of it was restricted to things captured from barbarians either in time of war or peace, or from duly constituted States, with which Rome was engaged in a regular war, 'iustum bellum,' attended by all the fetial formalities. Such *occupatio bellica*, besides bestowing general sovereignty, more particularly effected an immediate transfer of the property. The *Digest* contains a specific provision to this effect: "Quae ex hostibus capiuntur, iure gentium statim capiuntium fiunt."¹ Whatever was captured from the enemy on his own soil belonged, as a general rule, to the State;² for the State, by virtue of its juridical personality and its very *raison d'être*, was pre-eminently capable of realizing the physical fact of possession, the *corpus* or *factum*, together with the mental element, the intention to acquire ownership, the *animus rem sibi habendi*. A similar conception, indeed, long obtained in various modern States; but now military occupation rests on a different basis from that of the Roman *occupatio bellica*, and confers, at most, certain powers of a provisional character. In certain cases, Roman individuals could acquire property for themselves,—sometimes, for example, when the enemy's things were situate on Roman territory at the time of the breaking out of hostilities,³ or as a result of private plundering expeditions to enemy countries not allied to Rome. On the other hand, the principles of *occupatio bellica* were reciprocally applied to the disadvantage of the Romans themselves; so that, in this respect, juridical equality was recognized.

Kinds of
booty.

Various words are employed by Roman writers to designate booty taken in war, as, for example, *praeda*, *manubiae*, *exuviae*, *spolia*. Of these terms, *praeda* denotes plunder, booty of every description, whether taken on

¹ *Dig.* xli. 1. 5. 7.

² Cf. *Dion. Hal.* vii. 63.

³ *Dig.* xli. 1. 51: "Et quae res hostiles apud nos sunt, non publicae, sed occupantium fiunt."

land or sea,¹ and, as such, has the most general and comprehensive meaning. *Manubiae* is often taken to represent the proceeds realized by the quaestor² from the sale of all the things included under *praeda*. Such, at least, is the distinction between them drawn by Aulus Gellius, who says: "Praeda dicitur corpora ipsa rerum, quae capta sunt, manubiae vero appellatae sunt pecunia a quaestore ex venditione praedae redacta."³ This distinction has been adopted by Mommsen,⁴ Marquardt,⁵ and others, but rejected by Karlowa,⁶ who certainly shows good grounds for his contention. Cicero also makes a certain discrimination between the two.⁷ Further, the word *exuviae* denotes strictly anything stripped (*exuere*, to despoil, to deprive) from the person of the adversary; ⁸ whilst *spolia* is frequently used to indicate also armour and weapons, though both words are somewhat loosely applied to trophies, such as standards, chariots, beaks of vessels,⁹ etc.

Numerous examples are given by the Roman annalists of the acquisition of property in the booty taken from the enemy, as well as in his immovables.¹⁰ Thus, at

¹ Cf. *Corp. inscrip. Lat.* i. 195, which speaks of maritime plunder, 'navaled praedad.'

² Cf. Liv. iv. 53. 10; v. 26. 8; x. 46. 5.

³ *Noct. Att.* xiii. 24. ⁴ *Römische Forschungen, loc. cit.* ii. pp. 417 seq.

⁵ *Römische Staatsverwaltung*, ii. p. 286.

⁶ *Römische Rechtsgeschichte*, ii. pt. i. pp. 5 seq.

⁷ *De leg. agr.* ii. 22. 59: "... aurum, argentum ex praeda, ex manubiis, ex coronario, ad quoscumque pervenit neque relatum est in publicum neque in monumento consumptum. . . ."

⁸ Cf. Virg. *Aen.* ii. 275-6:

"quantum mutatus ab illo
Hectore, qui redit exuvias indutus Achilli";

Tibull. i. 1. 53:

"Te bellare decet terra, Messalla, marique,
Ut domus hostiles praeferat exuvias."

⁹ Cf. Cic. *De imp. Pomp.* 18, where he speaks of the forum being decorated with maritime spoils: "exuviis nauticis et classium spoliis ornatum."—Sueton. *Aug.* 18, mentions "spolia navalia."

¹⁰ Cf. Liv. xxx. 14.

the conference at Tempe, in Thessaly, 199 B.C., T. Quinctius Flaminius, disputing the claim of the Aetolians, held that Thebes became the property of the Roman people by the laws of war,—“nam eas populi Romani iure belli factas esse Quinctius dicebat.”¹ Similarly, in 187 B.C., the Roman ambassadors declared, with respect to certain disputed cities, that if Philip subdued them in war, he should, by the laws of war, hold them as the prize of victory,—“si Philip-pus bello cepisset eas, praemium victoriae iure belli habiturum.”²

Restrictions
as to enemy
property—
what
considered
inviolable.

Temples.

Of the different kinds of enemy property, temples, graves,³ and other sacred objects were considered inviolable. Not only were injuries to these forbidden by human law, but it was the universal belief that the gods themselves inflicted severe penalties on offenders. For carrying off sacred cattle, the companions of Odysseus made atonement with their lives. Herodotus relates that madness seized Cleomenes because (as the Athenians thought), when he had invaded Eleusis, he cut down the grove of the goddesses, Demeter and Persephone,—διότι ἐς Ἐλευσίνα ἐσβαλὼν, ἔκειρε τὸ τέμενος τῶν θεῶν.⁴ To despoil the treasures of a temple was also held to be an act of sacrilege.⁵ Polybius mentions the report of the madness and death of Antiochus for plundering the temple of Artemis,⁶ and of the punishment of Prusias for robbing a temple.⁷ It was customary, in the conclusion of peace, to include a provision for the restoration of sacred objects that had been destroyed or damaged, especially so in cases where expiation or atonement was doubtful. Thus, at the congress of Nicaea, in Locris, 198-197 B.C., Attalus, the king of Pergamus, demanded that Philip should restore the temple of Aphrodite, as well as the grove of Nicephorium, both of which he had

¹ Liv. xxxiii. 13.

² Liv. xxxix. 29.

³ Cf. Diodor. xiv. 76.

⁴ Herodot. vi. 75.

⁵ Herodot. ix. 120.

⁶ Polyb. xxxi. 11.

⁷ *Ibid.* xxxii. 27.—Cf. Diodor. xxxi. 46.

destroyed.¹ In the conflict between the Boeotians and the Athenians in the eighth year of the Peloponnesian war (424 B.C.), the former remonstrated with the latter for fortifying Delium, after their invasion, and dwelling there, and doing all that men usually do in an unconsecrated place, and also for drawing the sacred water for common use.² And hence the Boeotians complained that the Athenians transgressed the universally recognized customs of Hellas,—ὅτι οὐ δικάως δράσειαν παραβαίνοντες τὰ νόμιμα τῶν Ἑλλήνων;³ for those who invaded the territory of others, they pointed out, always abstained from touching the temples,—πάσι γὰρ εἶναι καθεστηκός ἰόντας ἐπὶ τὴν ἀλλήλων ἱερῶν τῶν ἐνότων ἀπέχεσθαι. . . .⁴ The Athenians, however, by their reply, fully acknowledged the sacred and inviolable character of temples and their accessories. They declared through their herald that they had not done any injury to the temple, and were not going to do any if they could help; that they had not entered it in the first place with any malicious intent, but only that they might defend themselves against those who were really injuring them. They pointed out, however, that in accordance with Hellenic practice, those who were masters of a country had also possession of the temples, and that, having due regard to the insuperable demands of necessity in warfare, only so far as it was possible were they obliged to show the customary reverence.⁵ In the Sicilian expedition, 414 B.C., the Athenians having captured that part of Syracuse where the temple of Olympian Zeus was situated, did not lay violent hands on any sacred object,

¹ Polyb. xviii. 2.—Cf. Liv. xxxiii. 33.

² Thuc. iv. 97.

³ *Ibid.*

⁴ *Ibid.*

⁵ Thuc. iv. 98: τσαῦτα τοῦ κήρυκος εἰπόντος, οἱ Ἀθηναῖοι πέψαντες παρά τοὺς Βοιωτοὺς ἑαυτῶν κήρυκα τοῦ μὲν ἱεροῦ οὔτε ἀδικῆσαι ἔφασαν οὐδὲν οὔτε τοῦ λοιποῦ ἐκόοντες βλάψειν· οὐδὲ γὰρ τὴν ἀρχὴν ἐσελθεῖν ἐπὶ τούτῳ, ἀλλ' ἵνα ἐξ αὐτοῦ τοὺς ἀδικούντας μᾶλλον σφᾶς ἀμύνωνται. τὸν δὲ νόμον τοῖς Ἑλλησιν εἶναι, ὧν ἂν ᾖ τὸ κράτος τῆς γῆς ἐκάστης, ἦν τε πλέονος ἦν τε βραχυτέρας, τούτων καὶ τὰ ἱερά ἀεὶ γίγνεσθαι, τρόποις θεραπευόμενα οἷς ἂν πρὸς τοῖς εἰωθόσι καὶ δύνωνται.

and left everything under the care of the priest.¹ The Lacedaemonian king, Agesilaus, was particularly praised for paying due respect not only to the sanctuaries of the Hellenic communities, but even to those belonging to barbarians.²

The opinion of Polybius.

On this subject, as well as on the treatment of the adversary's property in general, there is a striking pronouncement of Polybius, whose opinions and animadversions no doubt represent the most enlightened views and, for the most part, the accepted principles of the time. In reference to the plundering of Thermus by Philip III., in 218 B.C., the historian says that the sacking of dwelling-houses there, the seizure of corn and other provisions, the setting fire to much property, the carrying off of the valuable dedicated arms of the porticoes, and the destruction of the rest,—all this was right and fair by the laws of war;—*καὶ ἕως μὲν τούτου πάντα κατὰ τοὺς τοῦ πολέμου νόμους καλῶς καὶ δικαίως ἐπράττετο.*³ But in burning the colonnades, destroying the dedicated offerings, levelling the buildings to their foundations, throwing down the statues, the Macedonians transcended all legitimate conduct; Polybius observes that he scarcely knows how to characterize such proceedings,—*τὰ δὲ μετὰ ταῦτα πῶς χρὴ λέγειν οὐκ οἶδα.*⁴ Moreover, the 'ius talionis' in this respect is strongly condemned. He firmly emphasizes that the offenders cannot justifiably claim the right to retaliate upon the Aetolians with the same impious outrages as the latter had themselves committed at Dium⁵ and Dodona.⁶ Polybius recalls the better and more regular conduct of Antigonos Doson, Philip's predecessor, when he defeated Cleomenes at the battle of Sellasia, 221 B.C., and became master of Sparta; of

'Ius talionis' condemned.

¹ Pausan. x. 28. 3 : ὡς Ἀθηναῖοί τε δῆλα ἐποίησαν, ἥνίκα εἶλον Ὀλυμπίου Διὸς ἐν Συρακούσαις ἱερὸν οὔτε κινήσαντες τῶν ἀναθημάτων οὐδὲν τὸν ἱερέα τε τὸν Συρακόσιον φύλακα ἐπ' αὐτοῖς ἔσσαντες.

² Xenoph. *Ages.* x. 1 ; Corn. Nep. *Ages.* iv. 7.

³ Polyb. v. 9.

⁴ *Ibid.*

⁵ Cf. Polyb. iv. 62.

⁶ Cf. Polyb. iv. 67.

Philip I., after his great victory over the Athenians at Chaeronea, 338 B.C., when his justice and humanity were conspicuous; and of Alexander the Great who, though so enraged with Thebes that he sold all its inhabitants into slavery and levelled the city, carefully avoided outraging religion, in effecting its capture, and took the greatest precautions against even involuntary damage being done to the temples or any part of their sacred enclosures.¹ Again, when Alexander went over to Asia to take vengeance on the Persians for the sacrilegious offences they had committed against the Greeks, whilst exacting the penalty to the full he yet refrained from doing violence to places dedicated to the gods, although the Persian transgressions had been conspicuously of this very nature.² These are the examples, says Polybius, that Philip ought to have followed on this occasion, and thus have proved himself the successor and heir of these men, if not of their power, at least of their principles and magnanimity.³ And to the following effect he next sums up what is permitted and what prohibited in war: "But the fact is, that whereas the taking and demolishing an enemy's forts, harbours, cities, men, ships, and crops, and other such things, by which our enemy is weakened, and our own interests and tactics supported, are necessary acts according to the laws and rights of war; to deface temples, statues, and such like erections in pure wantonness, and without any prospect of strengthening oneself, or weakening the enemy must be regarded as

What permitted and what prohibited in war.

¹ Polyb. v. 10: . . . τῆς γε πρὸς τοὺς θεοὺς εὐσεβείας οὐκ ὀλιγώρησε περὶ τὴν κατάληψιν τῆς πόλεως, ἀλλὰ πλείστην ἐποιήσατο πρόνοιαν ὑπὲρ τοῦ μηδ' ἀκούσιον ἀμάρτημα γενέσθαι περὶ τὰ ἱερά καὶ καθόλου τὰ τεμένη.

² *Ibid.*: τῶν δὲ τοῖς θεοῖς καταπεφημισμένων πάντων ἀπέσχετο, καίπερ τῶν Περσῶν μάλιστα περὶ τοῦτο τὸ μέρος ἐξαμαρτόντων ἐν τοῖς κατὰ τὴν Ἑλλάδα τόποις.

³ *Ibid.*: ταῦτ' οὖν ἐχρῆν καὶ τότε Φίλιππον ἐν νῶ λαμβάνοντα συνεχῶς μὴ οὕτως τῆς ἀρχῆς ὡς τῆς προαιρέσεως καὶ τῆς μεγαλοψυχίας διάδοχον αὐτὸν ἀναδεικνύναι καὶ κληρονόμον τῶν προειρημένων ἀνδρῶν.

an act of blind passion and insanity.”¹ And animated by the sentiments that Plato had long before expressed, and employing somewhat similar phraseology, the historian insists that war is waged justly only when its object is to exact no more than due and proper reparation for wrongful acts, and not when it aims at the annihilation of the offenders, and the total destruction of their country.²

Similarly, Livy relates that at the Panaetolium, 200 B.C., the Athenian ambassadors vigorously denounced the cruelty and inhumanity of Philip. They did not complain, he says, because of their having suffered hostile treatment at the hands of an enemy; for there were certain rights of war by virtue of which one could justifiably do various things, and so, reciprocally, one was obliged to endure these things. Accordingly, the burning of their crops, the demolition of their houses, the seizure of their men and cattle as spoil were rather misfortunes to the sufferers than illegitimate conduct on the part of the enemy. But of this, on the other hand, they had good reason to complain, that he who called the Romans foreigners and barbarians had himself so atrociously violated all rights, both divine and human, as to have waged an impious war against the gods below as well as the gods above; for he had demolished the sepulchres and monuments, and laid open the graves; he had scattered his destructive flames around all the temples, and left the images of the gods lying scorched

Sepulchres,
graves,
monuments
inviolable.

¹ V. II : τὸ μὲν γὰρ παραιεῖσθαι τῶν πολεμίων καὶ καταφθεῖρειν φρούρια λιμένας πόλεις ἄνδρας ναῦς καρπούς, τὰλλα τὰ τούτοις παραπλήσια, δι' ὧν τοὺς μὲν ὑπεναντίους ἀσθενεστέρους ἂν τις ποιήσαι, τὰ δὲ σφέτερα πράγματα καὶ τὰς ἐπιβολὰς δυναμικώτερας, ταῦτα μὲν ἀναγκάζουσιν οἱ τοῦ πολέμου νόμοι καὶ τὰ τούτου δίκαια δρᾶν· τὸ δὲ μήτε τοῖς ἰδίους πράγμασιν ἐπικουρίαν μέλλοντα μηδ' ἡντινοῦν παρασκευάζειν μήτε τοῖς ἐχθροῖς ἐλλάττωσιν πρὸς γε τὸν ἐνεστῶτα πόλεμον, ἐκ περιττοῦ καὶ ναοὺς ἅμα δὲ τούτοις ἀνδριάντας καὶ πᾶσαν δὴ τὴν τοιαύτην κατασκευὴν λυμάλινεσθαι πῶς οὐκ ἂν εἴποι τις εἶναι τρόπον καὶ θυμοῦ λυτῶντος ἔργον ;

² *Ibid.*

and mutilated among the prostrated pillars of their fanes.¹

Just as victory and occupation were deemed to confer on the victor the right of property in the territory and movable possessions of the vanquished, so the person of the defeated enemy was considered to be at the mercy of the conqueror.² Amongst the Greeks captives were sometimes indiscriminately put to death, sometimes enslaved, or sold into slavery—though to fellow Greeks and not to barbarians.³ From a legal point of view there was but little difference, for practical purposes, between a slave, *δοῦλος* (*servus*), and a prisoner of war, *αἰχμάλωτος* (*captivus*). In 476 B.C. the Athenians under Cimon besieged Eion, took it from the Persians, and sold the inhabitants into slavery.⁴ A similar fate befell the people of Melos when their town was captured by Athens.⁵ In 427 B.C. Alcidas, on his return to Peloponnesus, touched at Myonnesus in the territory of Teos, and there slew most of the captives taken on his voyage. But the Samian exiles remonstrated with him for putting to death prisoners who had not been in open hostilities against him, but were allies of Athens from necessity.⁶ Paches, after taking the citadel of Notium, slaughtered

Right as to the person of the defeated enemy.

In Greece.

Prisoners of war.

¹ Liv. xxxi. 30: "... Neque id se queri, quod hostilia ab hoste passi forent; esse enim quaedam belli iura, quae ut facere, ita pati sit fas; sata exuri, dirui tecta, praedas hominum pecorumque agi, misera magis quam indigna patienti esse; verum enimvero id se queri, quod is, qui Romanos, alienigenas et barbaros vocet, adeo omnia simul divina humanaque iura polluerit, ut priore populatione cum infernis deis, secunda cum superis bellum nefarium gesserit. omnia sepulcra monumentaque diruta esse in finibus suis, omnium nudatos manes, nullius ossa terra tegi. . . . circa ea omnia templa Philippum infestos circumtulisse ignes; semusta, truncata simulacra deum inter prostratos iacere postes templorum."

² Cf. Xenoph. *Cyrop.* vii. 5. 73.

³ Philostrat. *Vita Apollod.* viii. 7. 12: "Ἕλληνες δ' ἐλευθερίας ἐρασταὶ ἔτι καὶ οὐδὲ δοῦλον ἀνήρ Ἕλλην πέρα ὄρων ἀποδώσεται, ὅθεν οὐδὲ ἀνδραποδισταῖς οὔτε ἀνδραπόδων καπήλοις ἐς αὐτοὺς παριτητέα.

⁴ Thuc. i. 98.

⁵ Thuc. v. 116.

⁶ Thuc. iii. 32.

all the Arcadians and barbarians he found there (427 B.C.), and colonized the place under leaders sent from Athens.¹ In 428 B.C. the Mytileneans of Lesbos revolted from Athens, partly through their fear of being reduced to the condition of the other subject-allies, and partly through their repugnance to assist her in her ambitious designs; but in the following year they were obliged to capitulate to Paches. The latter despatched to Athens over a thousand prisoners. Of these Salaethus, a Lacedaemonian envoy, who had encouraged the others to hold out, was at once put to death. The disposal of the other prisoners caused some discussion in the Athenian assembly. At the instigation of Cleon, the demagogue, the former opponent of Pericles, an order was first made to slaughter not only the men who had arrived in Athens, but the entire male population of Mytilene that was of military age, and to enslave the women and children.² At the instance of Mytilenean envoys the execution of the order was delayed, for the purpose of calling another assembly. There Cleon reproved the Athenians for being too foolishly kind to their allies; he pointed out that impolitic indulgence would only make the other allies revolt, and clamoured for 'justice.'³ However, an amendment of Diodotus was carried, and the previous order countermanded.⁴ As to the prisoners in Athens, they were, on the motion of Cleon, slain to a man. Similarly, the Lacedaemonians put to death all the prisoners taken after the surrender of Plataea; there were two hundred Plataeans, and twenty-five Athenians who had assisted them during the siege; and all the women were reduced to slavery.

These few examples show, without increasing the list, the usual treatment accorded to the worsted opponents. Not infrequently, however, were there certain relaxations (which will be shortly referred to) with regard to the ransom and exchange of prisoners.⁵

¹ Thuc. iii. 34. ² Thuc. iii. 36. ³ iii. 37-40. ⁴ iii. 49.

⁵ See *infra*, pp. 257 *seq.*

The Roman treatment of their enemies was, on the whole, far less rigorous. The Greeks not possessing any real faculty for territorial expansion, absorption of other peoples, and pacific imperial organization, generally engaged in conflicts with each other for the purpose of asserting supremacy, and procuring the enjoyment of its short-lived glory,—an object which often involved the belligerents in a mutual slaughter. The genius of the Romans was of a different character. To their invincible power of arms was added practical administrative skill, a gift for conciliating the subjugated, and even arousing their sympathy. Their policy from the first was, on the one hand, ‘*debellare superbos*,’ to subdue the proud and arrogant peoples, and, on the other, ‘*parcere subiectis*,’¹ to spare those who have submitted to their sovereignty. But, in both cases, greater or lesser benefits were conferred on the conquered nations, varying, at different times, from the bestowal of complete Roman citizenship to that of only limited rights thereof; and, likewise, their political relationships to Rome varied from a mere acknowledgment of Roman suzerainty to complete subjection.

In Rome.

Roman policy
with regard
to enemies.

Indiscriminate slaughter and furious destruction were foreign to Roman policy and practice. When, for example, ambassadors from the Aduatuci came to Caesar to sue for peace, and begged that their countrymen should not be deprived of their arms, owing to the hostilities of their neighbours, he replied that, in accordance with his customary practice, rather than owing to their desert, he would spare them if they surrendered themselves before the battering-ram touched the wall; that their capitulation must be unconditional, and their arms must be delivered up; and that, as he had done in the case of the Nervii, he would command their neighbours not to offer any injury to those who had

¹ Cf. Virg. *Aen.* vi. 851-853:

“Tu regere imperio populos, Romane, memento;
Hæc tibi erunt artes, pacisque imponere morem,
Parcere subiectis, et debellare superbos.”

surrendered to the Roman people.¹ Dionysius states that a rule existed in Rome as early as the time of Romulus, which prohibited the putting to death or enslaving of men captured in the conquered cities, and also the devastation of their territories; it provided, on the contrary, for the sending of inhabitants thither to take possession by lot of some part of the country, for making the conquered cities Roman colonies, and even for conceding to them some of the privileges of Roman citizenship.²

When the
enemy is
defeated by
assault.

It is important to distinguish between the case of voluntary surrender of the enemy, and that where the adversary is entirely vanquished, his fate depending on the will of the conqueror. In the latter case, prisoners, if not put to death for the previous commission of an offence against the majesty of Rome, or for treacherous acts against her ambassadors or generals, were often enslaved. Later legislation asserted the principle that conquest, apart from effecting a transfer of the property in the possession of the subjugated nation to the victors, bestowed also on them the right of disposing of the person of the enemy,—in which case servitude was their common lot. “Adeo quidem ut et liberi homines in servitutum deducantur.”³ The *Digest* points out that the word *servus* appears to be derived from the custom of preserving (‘servare’) prisoners, for the purpose of selling them.⁴ Horace says it is unadvisable to

¹Caes. *De bell. Gall.* ii. 32: “Se magis consuetudine sua quam merito eorum civitatem conservaturum, si priusquam murum aries attigisset, se dedidissent; sed deditiois nullam esse condicionem nisi armis traditis. se id, quod in Nervii fecisset, facturum finitimisque imperaturum, ne quam dediticiis populi Romani iniuriam inferrent.”

²Dion. Hal. ii. 16: τὸ μήτε κατασφάττειν ἢ βηδὸν τὰς ἀλούσας πόλεις πολεμίων μήτ' ἀνδραποδίζεσθαι μηδὲ γῆν αὐτῶν ἀνιέναι μηλόβοτον ἀλλὰ κληρούχους εἰς αὐτὰς ἀποστέλλειν ἐπὶ μέρει τινὶ τῆς χώρας, καὶ ποιεῖν ἀποικίας τῆς Ῥώμης τὰς κρατηθείσας, ἐνίαις δὲ καὶ πολιτείας μεταδιδόναι.

³*Dig.* xli. 1. 5. 7.

⁴*Dig.* l. 16. 239: “‘Servorum’ appellatio ex eo fluxit quod imperatores nostri captivos vendere ac per hoc servare, nec occidere solent.”

kill a prisoner when he can be sold,—“*vendere quum possis captivum, occidere noli,*”¹—though this observation may be due rather to an attitude of ‘worldly wisdom’ than to a sense of legal or moral obligation.

In the case of voluntary surrender a different policy was usually adopted.² But it must be observed here that sometimes, indeed, (though very rarely), the offer of surrender made by the enemy was not accepted under such circumstances as would make it difficult or impossible to guard and maintain large numbers of captives. Thus, when a Roman force was besieging Uspe in Pontus, in the time of Claudius, the beleaguered city offered to capitulate, but, as Tacitus says, as it would have been inhuman to slay prisoners, and very difficult to keep them under guard, the conquerors rejected the offer, preferring that the enemy should perish by the just operations of war.³

When the enemy makes a voluntary surrender.

Livy describes the formality of an early example of the surrender (*deditio*) of a people to Rome. Thus when Collatia, a city of the Sabines situated not far from Rome, surrendered in 616 B.C., the form adopted was as follows: The king, Tarquin, asked the Collatian envoys, ‘Are ye ambassadors and deputies sent by the people of Collatia to surrender yourselves and the people of Collatia?’ ‘We are.’ ‘Are the people of Collatia their own masters?’ ‘They are.’ ‘Do ye surrender yourselves and the people of Collatia, their city, lands, water, boundaries, temples, utensils, and everything sacred or profane belonging to them, into my power and that of the Roman people?’ ‘We do.’ ‘Then I receive them.’⁴

Formality of a surrender.

¹ *Epist.* i. 16. 69.

² See Voigt, *Das jus naturale . . .*, vol. ii. pp. 280 *seq.*, on “Völkerrechtliche Stellung der in Ditione befindlichen Völker.”

³ Tacit. *Ann.* xii. 17: “Quod aspernati sunt victores, quia trucidare deditos saevum, tantam multitudinem custodia cingere arduum, ut belli potius iure caderent.”

⁴ Liv. i. 38: Deditosque Collatinos ita accipio eamque deditiois formulam esse: rex interrogavit “estisne vos legati oratoresque missi a populo Conlatino, ut vos populumque Conlatinum dederetis?”

This formula implied a contractual stipulation, which is clearly analogous to that of a private conveyance.

Condition of
the surrendered
people.

Enemies who surrendered at discretion and delivered up to their conquerors their persons, their territories, and all other possessions,¹ were designated *dediticii*, or more exactly *peregrini dediticii*. Gaius describes them as enemies who having taken up arms and fought against the people of Rome have been defeated and have freely surrendered.² Their position was afterwards more clearly defined by a law of annexation, *lex deditionis*. With respect to Roman rights, they were assimilated to the class of freedmen (*libertini*), and were therefore not admitted to the most important civic privileges. Thus, as Gaius says, surrendered enemies were debarred from *testamentifacio*: they were prohibited from taking under a will in any form, as were other aliens, and were also, according to the prevailing opinion, incompetent to make a will.³ Ulpian advances a reason for this, in that the *dediticius* had not citizenship either in Rome or in any other State;⁴ so that it would seem that in the time of Gaius and Ulpian, *domicilium* was not regarded as equivalent to *patria* with respect to giving validity to the form of a disposition in favour of the surrendered enemy. Only the lowest degree of civic freedom was enjoyed by freedmen belonging to this category, and no

“sumus.” “estne populus Conlatinus in sua potestate?” “est.”
“deditisne vos populumque Conlatinum urbem, agros, aquam, terminos, delubra, utensilia, divina humanaque omnia in meam populique Romani dicionem?” “dedimus.” “at ego recipio.”

¹ Besides Liv. i. 38 of the preceding note, cf. also Liv. iv. 30; vi. 8; viii. 1; xxviii. 34; xxxviii. 23; etc.

² *Inst.* i. 14: “Vocantur autem peregrini dediticii hi qui quondam adversus populum Romanum armis susceptis pugnaverunt, deinde victi se dederunt.”

³ *Inst.* i. 25: “Hi vero qui dediticiorum numero sunt, nullo modo ex testamento capere possunt, non magis quam quilibet peregrinus, nec ipsi testamentum facere possunt secundum id quod magis placuit.”

⁴ *Reg.* xx. 14: “Is qui dediticiorum numero est testamentum facere non potest, quoniam nec quasi civis Romanus testari potest, cum sit peregrinus, quoniam nullius certae civitatis civis est, ut secundum leges civitatis suae testetur.”

means of acquiring Roman citizenship by them was provided by any statute, senatusconsult, or constitution.¹ Further disabilities were imposed on them by the *lex Aelia Sentia*, A.D. 4. They were prohibited from residing in Rome, or within a hundred miles from Rome.² Those who disobeyed this provision were sold, together with their goods, and were to be held in servitude beyond the hundredth milestone from Rome; after such event they could not be emancipated, and in case they were manumitted they became the slaves of the Roman people.³ In reference to the descendants of the *dediticii*, however, several of the above-mentioned incapacities did not apply. Their sons, though reduced to poverty through the confiscation of their parents' property by the patrons, were placed in the position of *peregrini* proper, and were under no legal obligations to those patrons.⁴ In A.D. 530 the *dediticia libertas* was formally abolished by Justinian,⁵ though it had already been obsolete for a long time.

The absolute powers which the conqueror claimed over the defeated nations, or prisoners taken in war, were not always put into practice. From time to time there were in Greece, apart from mitigations of various kinds introduced on the initiative of the belligerents themselves, protests against the severe treatment of the

Relaxations as to prisoners.

In Greece.

¹ Gaius, *Inst.* i. 26: "Pessima itaque libertas eorum est qui dediticiorum numero sunt; nec ulla lege aut senatusconsulto aut constitutione principali aditus illis ad civitatem Romanam datur."—Cf. Sueton. *Aug.* 40.

² Cf. Liv. viii. 14.

³ Gaius, *Inst.* i. 27: "Quin etiam in urbe Roma vel intra centesimum urbis Romae miliarium morari prohibentur; et si qui contra ea fecerint, ipsi bonaque eorum publice venire iubentur ea condicione, ut ne in urbe Roma vel intra centesimum urbis Romae miliarium serviant neve umquam manumittantur; et si manumissi fuerint servi populi Romani esse iubentur. et haec ita lege Aelia Sentia comprehensa sunt."

⁴ See vol. i. pp. 230 *seq.*, on the position of peregrins.

⁵ *Cod.* vii. 5.

adversary in the field, and of prisoners taken after the fighting was over. Plato strongly opposed the wanton destruction or enslaving of Hellenes by people of the same race.¹ In the *Heraclidae* of Euripides, a prisoner is represented as having been brought to Alcmena, who said he must suffer a miserable death; but objections were urged on the ground that such a measure would be contrary to the custom of the country:

- “*Mess.* It is not possible for you to put him to death.
Alc. In vain then have we taken him prisoner.
 But what law hinders him from dying?
Mess. It seems not well to the chiefs of the land.
Alc. What is this? Not good to them to slay one’s
 enemies?
Mess. Not any one they have taken alive in battle.”²

Similarly the Plataeans, in their defence before the Lacedaemonian judges, exhorted the victors not to take their lives,—for such an act would bring them infamy and dishonour; in the name of piety their lives must be spared.³ After the victory of Syracuse over Carthage at Himera, 480 B.C., one of the conditions of peace is related to have been that Carthage should in future refrain from her customary practice of slaughtering or immolating prisoners of war;⁴—but this is probably a fiction invented in later times, though the report in itself shows, at all events, the general attitude of repugnance with regard to barbaric practices.

Occasionally we find generals on their own account adopting a milder policy. The example of the Spartan commander, Callicratidas, the successor of Lysander,

¹ *Repub.* v. 471.

² Eurip. *Heraclid.* 965 *seq.* (in Nauck’s ed. 961 *seq.*):

ΑΓΓ. οὐκ ἔστ’ ἀνυστὸν τόνδε σοι κατακτανεῖν.

ΑΔ. ἄλλως ἄρ’ αὐτὸν αἰχμάλωτον εἶλομεν.

εἶργει δὲ δὴ τίς τόνδε μὴ θανεῖν νόμος;

ΑΓΓ. τοῖς τῆσδε χώρας προστάταισιν οὐ δοκεῖ.

ΑΔ. τί δὴ τόδ’; ἐχθροὺς τοισίδ’ οὐ καλὸν κατανεῖν;

ΑΓΓ. οὐχ ὄντιν’ ἄν γε ζῶνθ’ ἔλωσιν ἐν μάχῃ.

³ Thuc. iii. 58.

⁴ Plut. *Apophth.* p. 175.

was conspicuous. After taking the town of Methymna by storm, 407 B.C., he delivered it over to be plundered by his men, and caused the slaves to be sold for the benefit of his soldiers. But, in spite of the persuasions of his allies, he refused to sell the Athenian garrison and Methymnaean citizens as slaves, declaring that so long as he exercised the command no Greek would ever be reduced to slavery,—*ἑαυτοῦ ἀρχοντος οὐδένα Ἑλλήνων εἰς τὸ ἐκείνου δυνατὸν ἀνδραποδισθῆναι*.¹ Grote bestows great eulogy on the Lacedaemonian admiral for his magnanimous conduct. "No one who has not familiarized himself with the details of Grecian warfare can feel the full grandeur and sublimity of this proceeding. . . . It is not merely that the prisoners were spared and set free. . . . It is that this particular act of generosity was performed in the name and for the recommendation of pan-Hellenic brotherhood and pan-Hellenic independence of the foreigner. . . . It is, lastly, that the step was taken in resistance to the formal requisition on the part of his allies."² On two occasions Philip is said to have liberated Athenian prisoners without ransom, in the first place after the taking of Olynthus,³ 348 B.C., and secondly after the battle of Chaeronea, 338 B.C., when he dismissed them with all their baggage.⁴

Belligerents were very frequently allowed to ransom the captives taken in war.⁵ This transaction already appears in the Homeric age. In the very beginning of the *Iliad*, Chryses, a priest of Apollo, entreats Agamemnon to accept ransom (*ἄποινα*) for his daughter; and towards the end Priam prevails on Achilles to deliver up the dead body of his son, on payment of a ransom,

Ransom of prisoners of war.

¹ Xenoph. *Hellen.* i. 6. 14.

² *Hist. of Greece*, vol. vi. p. 387.

³ Aeschin. *De fals. leg.* 16: . . . ὑπὸ Φιλίππου ἄνευ λύτρων, γενόμενος αἰχμάλωτος. . . .

⁴ Cf. Polyb. v. 10, as to the Macedonian king's humane action in other respects.

⁵ Cf. Daremberg-Saglio, *s.v.* *Lytra*, by A. Martin.

to ensure his due obsequies. Achilles sold some of his prisoners, but admitted others to ransom.¹

In historical times provisions for ransom were often made as the result of diplomatic negotiations. Thus Philip despatched Amphilochus to Athens to make arrangements for the ransom of the Macedonian prisoners captured by the Athenians.² Shortly afterwards the Athenians, in their turn, sent Aristodemus as envoy to Philip with regard to the Athenians taken in Olynthus; and due provision on the subject was made in the subsequent peace of Philocrates.³ In transactions of this kind, as in many others of a similar character, the *proxenoi* had an opportunity of intervening and exercising their good offices on behalf of the States they represented; thus the payment of ransom by Corcyra to Corinth was guaranteed by the *proxenoi* of the former.⁴

Before their ransom was effected, the prisoners were sometimes subjected to harsh treatment,⁵ mainly with a view, no doubt, of inducing their more fortunate countrymen to ransom them as quickly as possible. Herodotus relates that the Athenians having defeated the Chalcidians and the Boeotians, 507 B.C., threw many captives into prison, where they were bound in chains; and after having liberated them on payment of a ransom of two minae for each, the victors hung up the fetters in the Acropolis.⁶

The branding of captives was not an uncommon practice, which was apparently adopted to indicate the acquisition of property in them. The Samians marked the foreheads of Athenian prisoners with the figure of an owl, in retaliation for the branding of their own

Prisoners
sometimes
branded.

¹ Cf. *Iliad*, vi. 425; xi. 106; xxi. 40.

² Demosth. *Epist. Philipp.* 3 (or 159): ... ὥστε Ἀμφίλοχον ὑπὲρ τῶν αἰχμαλώτων ἐλθόντα πρεσβευτήν. . . .

³ Aeschin. *De fals. leg.* 15-20.

⁴ See vol. i. pp. 152 *seq.*, 324, as to *proxenoi* and their functions.

⁵ Cf. Thuc. iv. 41, 47, 48.

⁶ Herodot. v. 77.

prisoners by the Athenians with the figure of a Samian vessel ;¹ the image of a horse was stamped on Athenian prisoners by the Syracusans ;² Ptolemy IV. Philopator used that of an ivy in the case of Alexandrian Jews ;³ Theban prisoners were branded by the Persians with the royal mark.⁴

But humaner treatment also obtained. Agesilaus reminded his soldiers that prisoners were men to be kept, and not criminals to be punished,—καὶ πολλάκις μὲν προηγόρευε τοῖς στρατιώταις τοὺς ἀλίσκομένους μὴ ὡς ἀδίκους τιμωρεῖσθαι, ἀλλ' ὡς ἀνθρώπους ὄντας φυλάσσειν. . . .⁵ Pausanias relates that it was an established rule with the Thebans to hold their prisoners to ransom, and to put to death all Boeotian fugitives who fell into their hands. But when Epaminondas, the greatest of Theban generals—in the opinion of Cicero, the 'princeps Graeciae'⁶—had taken Phoebia, a Sicyonian town, where most of the Boeotian fugitives had gathered together, he nominally assigned to each of the men he captured there a different nationality, and set them all free.⁷ Again, cases are not wanting where captives were dismissed on parole, to give them an opportunity of finding ransomers. And prisoners who were able to ransom themselves often became the guests of their conquerors. Plutarch, explaining the word *δορύξενος*, says that when the prisoner paid his ransom, his captor took him home, admitted him to his board, then sent him back to his country, so that in this way a tie of perpetual friendship was established between them. Hence, *δορύξενος*, he says, signifies a 'spear-friend' (*δόρυ*, a spear, *ξένος*, a guest-friend), that is, one who,

¹ Plut. *Pericl.* 26.

² Plut. *Nic.* 29.

³ *Maccab.* iii. 2. 29.

⁴ Herodot. vii. 233.

⁵ Xenoph. *Agas.* i. 21.

⁶ Cic. *Acad.* i. 4.

⁷ Pausan. ix. 15. 4 : Θηβαίοις δὲ ἦν καθεστηκὸς τοὺς μὲν ἄλλους ὁπόσους αἰχμαλώτους ἔλοιεν ἀφίεναι χρημάτων, τοὺς δὲ ἐκ Βοιωτῶν φεύγοντας ζημιοῦν θανάτῳ. πόλισμα οὖν ἔλων Σικωνίων Φοιβίαν ἔνθα ἦσαν τὸ πολὺ οἱ Βοιώτιοι φυγάδες, στιγμὴν ἀφίσι τοὺς ἐγκαταληφθέντας, ἄλλην σφίσιςιν ἦν ἔτυχε πατρίδα ἐπονομάζων ἐκάστῳ.

having been a captive to an opponent's spear, subsequently became his friend.¹

Amount of
ransom.

Apart from any agreement arrived at by diplomatic negotiations as to the amount of ransom to be paid, there was a tendency to determine a normal price as the sum to be paid for a free man. According to Herodotus, as has been mentioned above, a sum of two minae was frequently paid by Peloponnesian States.² When Cleomenes deceived the Argives, who had taken refuge in sacred precincts, and captured them he received two minae for each, as being the fixed sum amongst the Peloponnesians.³ Plutarch mentions the payment of one mina.⁴ In Rhodes, a thousand drachmas was the ransom paid for a freeman, and half this amount for a slave. Aristotle distinguishing between natural justice, and conventional, gives as an example of the latter the rule as to the ransom of a prisoner being a mina,—*οἶον τὸ μῆς λύτροσθαι*;⁵ but at the time he wrote mercenary armies were common.

In Athens there was a law that the ransomed captive should reimburse his ransomer; otherwise, he became his slave. There was a provision to the same effect in Crete, and in Rome.⁶

Exchange of
prisoners.

Sometimes prisoners were exchanged. Thus in 429 B.C. the Athenians under Phormio having defeated the Peloponnesian fleet returned to Athens bringing with them the ships they had captured, together with

¹ Plut. *Quaest. Graec.* 17: ... τοὺς δ' ἄλισκομένους λύτρον τι τεταγμένον ἔδει καταβαλεῖν, καὶ τοῦτο ἐλάμβανον ἀφέντες. πρότερον δ' οὐκ εἰσέπραττον, ἀλλ' ὁ λαβὼν αἰχμάλωτον, ἀπήγεν οἴκαδε, καὶ μεταδοὺς ἄλῳν καὶ τραπέζης, ἀπέπεμπεν οἴκαδε. ὁ μὲν οὖν τὰ λύτρα κομίσας, ἐπηνείτο, καὶ φίλος αἰεὶ διετέλει τοῦ λαβόντος ἐκ δοριαλώτου δορυξένος προσαγορευόμενος.—The word came afterwards to mean a 'firm friend' as, for example, in Aeschylus, *Agam.* 880; *Choeph.* 562; and in Sophocles, *Elect.* 46; etc.

² Herodot. v. 77: χρόνῳ δὲ ἔλυσάν σφεας διμνέως ἀποτιμησάμενοι.

³ Herodot. vi. 79: ἅποινα δὲ ἐστὶ Πελοποννησίοισι, δύο μνῆαι τεταγμέναι κατ' ἄνδρα αἰχμάλωτον ἐκτίθειν.

⁴ Plut. *Quaest. Graec.* 17.

⁵ Arist. *Nic. Eth.* v. 10.

⁶ See *infra*, p. 268.

prisoners of free birth. The latter were exchanged man for man,—οἱ ἀνὴρ ἀντ' ἀνδρὸς ἐλύθησαν.¹ In 422 B.C. Cleon having taken Torone captured a large number of prisoners who were exchanged man for man against the prisoners taken by the Olynthians.²

On the conclusion of peace between belligerents provision was, of course, made in the treaties for the liberation of prisoners taken on both sides. Thus the ninth clause of the treaty (sometimes designated the peace of Nicias) entered into between the Athenians and their allies on the one side, and the Lacedaemonians and their allies on the other, 421 B.C., is to this effect: "The Athenians shall surrender the Lacedaemonian captives whom they have in their public prison, or who are in the public prison of any place within the Athenian dominions, and they shall let go the Peloponnesians who are besieged in Scione, and any other allies of the Lacedaemonians who are in Scione, and all whom Brasidas introduced into the place, and any of the allies of the Lacedaemonians who are in the public prison at Athens, or in the public prison of any place within the Athenian dominions. The Lacedaemonians and their allies in like manner shall restore those of the Athenians and their allies who are their prisoners."³

Apart from the special provisions relating to the *dediticii*, considered above, various relaxations as to the treatment of prisoners were likewise introduced by the Romans. From time to time Roman writers advocated, and statesmen and generals practised, moderation to foreign captives. When Mago surrendered

Prisoners of
war in Rome.

¹ Thuc. ii. 103.

² Thuc. v. 3.

³ Thuc. v. 18: . . . καὶ τοὺς ἄνδρας, ὅσοι εἰς Λακεδαιμονίων ἐν τῷ δημοσίῳ τῶν Ἀθηναίων, ἢ ἀλλοθὶ που, ὅσης Ἀθηναῖοι ἄρχουσιν, ἐν δημοσίῳ· καὶ τοὺς ἐν Σκιώνῃ πολιορκουμένους Πελοποννησίων ἀφείναι, καὶ τοὺς ἄλλους ὅσοι Λακεδαιμονίων ξύμμαχοι ἐν Σκιώνῃ εἰς καὶ ὅσους Βρασίδης ἐπέμψε, καὶ εἴ τις τῶν ξυμμάχων τῶν Λακεδαιμονίων ἐν Ἀθήναις ἐστὶν ἐν τῷ δημοσίῳ ἢ ἀλλοθὶ που, ἧς Ἀθηναῖοι ἄρχουσιν, ἐν δημοσίῳ. ἀποδόντων δὲ καὶ Λακεδαιμόνιοι καὶ οἱ ξύμμαχοι οὓς τινας ἔχουσιν Ἀθηναίων καὶ τῶν ξυμμάχων, κατὰ ταῦτά.

Carthagera (New Carthage) to Scipio, 209 B.C., all the inhabitants of the city numbering some ten thousand became prisoners of war; the Roman general put Mago and several Carthaginian senators in charge of Gaius Laelius, liberated the free-born citizens, allowed them to return to their homes, and even promised freedom to the skilled slaves at the successful termination of the war.¹ On several occasions Caesar liberated his prisoners on condition of their not taking up arms again. Pyrrhus was highly eulogized by Cicero for restoring prisoners without ransom. Ennius is quoted by the latter to attest the generosity of the king of Epirus who is represented as having, in a noble speech, spurned the offer of ransom as a huckster's transaction :

‘Nec mi aurum posco, nec mi pretium dederitis ;
Nec cauponantes bellum, sed belligerantes,

Quorum virtuti belli fortuna pepercit,
Eorundem me libertati parcere certum est.’²

In the dialogue between Pyrrhus and Agamemnon in Seneca's *Troades*, the latter advocates humane conduct towards prisoners, and points out that the sense of shame, if not positive law, should deter combatants from excesses. Thus to the observation of Pyrrhus :

‘Lex nulla capto parcit aut poenam impedit’

Agamemnon replies :

‘Quod non vetat lex, hoc vetat fieri pudor.’³

Ransom.

There are numerous examples of prisoners of war having been admitted to ransom by their Roman captors.

In the case of Roman prisoners ransomed by their friends, there is a law in the *Digest* providing that on their return home they were to refund the money paid.⁴

Exchange of
prisoners.

Prisoners were also exchanged by Rome, as, for example, in the first and the second Punic wars; and

¹ Polyb. x. 17.

² Cic. *De offic.* i. 12.

³ *Troad.* ll. 333, 334.

⁴ *Dig.* xliiii. 29. 3. 3; xlix. 15. 19. 9.

a fixed sum in gold or silver was paid by the State which received a larger number than it restored.¹ In 219 B.C., as Livy states, an agreement was entered into between the Roman and the Carthaginian generals that whichever received more prisoners than he returned should give two and a half pounds of silver for each man,—“in permutandis captivis . . . convenerat inter duces Romanum Poenumque, ut quae pars plus reciperet quam daret, argenti pondo bina et selibras in militem praestaret.”² And when in the following year a Roman camp surrendered to Hannibal, the Romans agreed to deliver up their arms and horses on condition that the ransom of every Roman should be three hundred denarii, of an ally two hundred, of a slave a hundred, and that on payment of the said ransom, they should be allowed to depart each with a single garment.³ Similarly after the great Carthaginian victory at Cannae, Hannibal permitted the Roman prisoners to ransom themselves, fixing the price at five hundred denarii for a horseman, three hundred for a foot-soldier, and a hundred for a slave.⁴

Roman prisoners dismissed on parole were compelled by their government to fulfil their oaths and return to their captors conformably to their promise. Thus when Regulus was captured by the Carthaginians in the first Punic war, and was afterwards allowed to go to Rome to negotiate the exchange of prisoners, he returned faithfully after having advised the senate not to restore the Carthaginian captives. And, in this connection, Cicero lays down the principle that if, under stress of circumstances, individuals have made a promise to an enemy they are bound to keep their word,—“si quid

Promises
made by
prisoners.

¹ Cf. Aul. Gell. vii. 18.

² Liv. xxii. 23.

³ Liv. xxii. 52 : “pacti, ut arma atque equos traderent, in capita Romana trecentis nummis quadrigatis, in socios ducenis, in servos centenis, et ut eo pretio persoluto cum singulis abirent vestimentis. . . .”

⁴ Liv. xxii. 58 : “itaque redimendi se captivis copiam facere, pretium fore in capita equiti quingenos quadrigatos nummos, trecentos pediti, servo centenos.”

singuli temporibus adducti hosti promiserunt, est in eo ipso fides conservanda.”¹ It is, again, related that after the battle of Cannae Hannibal sent ten prisoners to Rome to arrange about an exchange, if agreeable to the Roman people, and to suggest that, as regards those in excess, a pound of silver should be paid for each. Before they departed they took an oath to return to the Carthaginian camp, if the Romans refused to exchange prisoners. After their arrival in Rome and the delivery of Hannibal’s message, the senate rejected the offer; and thus the lives of the captive Romans were placed in extreme peril. The parents, relatives, and friends of the ten messengers, says Gellius, embraced them, and assured them that they were now restored to their country. But eight of them held it was not a just restoration, since they had bound themselves by oath to return; and, accordingly, they went back. The other two, however, remained in Rome, asserting they were free and delivered from the obligation of their oaths, since, when they had left the enemy’s camp, they had returned the same day on the pretext that they had forgotten something, but in reality to satisfy the terms of their engagement in that manner. This fraudulent evasion was deemed so base that they were despised and reproached by all, and afterwards branded by the censors; and their life became so unbearable that they killed themselves.² In every promise, says Cicero, the essential meaning and not the mere words must be considered,—“semper autem in fide quid senseris, non quid dixeris cogitandum.”³ And the obligation imposed by the solemn promise is recognized by Roman jurisprudence in the application of the *ius postliminii*, the benefit of which was not extended to prisoners who returned to Rome contrary to their engagement with the enemy.

Postliminium.

The institution of postliminium involves notions of international law, as well as principles of Roman private

¹ *De offic.* i. 13.

² Aul. Gell. vii. 18.

³ *De offic.* i. 13.

law, and applied to enemy captives as well as to Roman prisoners. The definition of Paulus given in the *Digest* would seem to suggest its derivation from the fetial law. The *ius postliminii* implied the right by which persons or things captured in war by the enemy were restored to their former status or condition on their return to the country to which they originally belonged;¹ and so, by a juridical fiction, a Roman prisoner of war could avoid the natural consequences of captivity. Failing such restoration, he would suffer the *maxima deminutio capitis*, the loss of citizenship and nationality, including *ingenuitas*, the privileges attaching to free birth, and all other rights; for example, if he were a *paterfamilias*, capture would *ipso facto* operate as a destruction of his *patria potestas* ('paternal power'); if he had before executed a testament, falling into the hands of the adversary rendered it invalid. But once he set foot again on his native soil, or on that of a friend, he at once recovered his former rights and civic position.² A will, however, that was made on enemy territory was considered null *ab initio*.³ If the wife of the prisoner was not a captive along with him, the marriage was dissolved, so that their consent was necessary subsequently to re-establish it; but later this provision was altered by the *lex Iulia* and the *lex Papia Poppaea*.⁴

The benefits of postliminium were not extended to deserters,⁵ as their act rendered them guilty of treason; to those who yielded to the enemy out of cowardice; to such as were delivered by the fetial proceedings of *deditio* and refused to be received again from the

¹ *Dig.* xlix. 15. 19, *pr.*: "Postliminium est ius amissae rei recipiendae ab extraneo et in statum pristinum restituendae inter nos ac liberos populos regesque moribus legibus constitutum."—*Cf. Cod.* viii. 50; *Just. Inst.* i. 12. 5.

² *Dig.* xlix. 15. 5. 1. ³ *Just. Inst.* ii. 12. 5. ⁴ *Dig.* xlix. 15. 8.

⁵ *Dig.* xlix. 15. 19. 4: "Transfugae nullum postliminium est; nam qui malo consilio et proditoris animo patriam reliquit, hostium numero habendus est."

enemy¹ (as in the case of Spurius Postumius, who was delivered to the Samnites, and C. Hostilius Mancinus, who was surrendered to Numantia,—the latter, however, having been restored to citizenship by a special *lex*); to those who preferred to reside with the enemy; or to individuals who had been taken abroad by the civil modes of conveyance.²

Apart from Roman citizens, the doctrine applied also to slaves, immovables, and certain movables, as, for example, trained horses, pack-mules, transport vessels (though not fishing-boats, or pleasure boats).³ Everything else could become, on capture, the permanent booty of the enemy,—“*si quid bello captum est, in praeda est, non postliminio redit.*”⁴ In this category were included arms, of which, it was held, Roman soldiers could not, without dishonour, be dispossessed,—“*non idem in armis iuris est, quippe nec sine flagitio amittuntur: arma enim postliminio reverti negatur, quod turpiter amittantur.*”⁵

If a captive slave was ransomed from the enemy by a Roman citizen, his former master could recover him by reimbursing the ransomer.⁶

If one citizen recaptured property subject to the *ius postliminii* which had belonged to another Roman citizen, the Roman captor was considered to be the agent of the State, which, therefore, restored it to the previous owner.

Sometimes *postliminium in pace* is spoken of in the *Digest* to distinguish it from the regular postliminium, namely, *in bello*. It was applied to the case of countries with which Rome was not at war,⁷ and, generally, to autonomous, independent States bound to Rome by a treaty.⁸

¹ *Dig.* xlix. 15. 4: “*an qui hostibus deditus reversus nec a nobis receptus civis Romanus sit, inter Brutum et scaevolam varie tractatum est; et consequens est, ut civitatem non adipiscatur.*”

² *Dig.* xlix. 15. 19. 7. ³ *Dig.* xlix. 15. 2. 20, §1; Cic. *Top.* viii. 36.

⁴ *Dig.* xlix. 15. 28, *pr.*—Cf. Liv. v. 16.

⁵ *Dig.* xlix. 15. 2. ⁶ *Dig.* xlix. 15. 12. 7.

⁷ *Dig.* xlix. 15. 5. 2. ⁸ *Dig.* xlix. 15. 9, *pr.*

CHAPTER XXV

WAR: PERSONS PROTECTED—RIGHT OF SANCTUARY
—BURIAL OF THE DEAD—TRUCE—*SPONSIO*—
TROPHIES—ESPIONAGE—NEUTRALIZATION AND
NEUTRALITY

AMONG the more important mitigations in the conduct of warfare and belligerent relationships, we find the protection of certain individuals, besides ambassadors and other diplomatic envoys (who have already been considered¹); the universal recognition of the right of sanctuary; the mild treatment of suppliants; the granting of safe-conducts; the establishment and observance of truces and armistices; the liberty freely accorded, even after the fiercest combat and merciless slaughter, to bury the dead and perform all due obsequies; the neutralization of certain places and objects; the insistence on the neutrality of States not fundamentally concerned in the disputes between others.

Priests and all other persons officiating in religious ceremonies and the common festivals were considered inviolable. Such protection was afforded even in the very earliest times; and infringements of this obligation were punished by the vengeance of the gods, and similarly condemned by men. Agamemnon, having committed an outrage on Chryses, the priest of Apollo at Chryse, was obliged to restore the latter's daughter, Chryseis, and to offer up an expiatory sacrifice,—for Apollo sent down a pestilence on the Grecian camp in retribution for the king's offence. Thus Odysseus,

¹ See vol. i. pp. 328 *seq.*

conducting the maiden to her father, said to him : ' Chryses, Agamemnon, king of men, sent me hither to bring thee thy daughter, and to offer to Phoebus a sacred hecatomb on behalf of the Danaans, wherewith to propitiate the king that hath now brought sorrow and lamentation on the Argives.'¹ An example of a later epoch showing regard for this rule is the terrible destruction of Thebes by Alexander, on which occasion he sold as slaves all the inhabitants, with the exception of those who had opposed the revolt, the personal friends and guests of the Macedonians, the descendants of the poet Pindar, and the priests.² On account of their admitted inviolability, priests were frequently employed, during the existence of hostile relationships, as mediators and special envoys to the adversary, under such circumstances as might imperil other classes of negotiators. Thus in 200 B.C., when Abydos (an Asiatic town near the Hellespont) was besieged by Philip, and compelled to capitulate, the beleaguered community despatched priests and priestesses with garlands to Philip to surrender the city to him, and to entreat his mercy.³ Other religious functionaries, such as soothsayers,⁴ and those attending the armies in the field, like the *pyrphoroi* (πῦρ, fire, φορός, bearing, carrying),

¹ *Iliad*, i. 442-445 :

ᾠ Χρύση, πρό μ' ἔπεμψεν ἄναξ ἀνδρῶν Ἀγαμέμνων,
παῖδά τε σοὶ ἀγέμεν, Φοῖβω θ' ἱερὴν ἑκατόμβην
ρέξαι ὑπὲρ Δαναῶν, ὄφρ' ἱλασόμεσθα ἄνακτα,
ὅς νῦν Ἀργείοισι πολύστονα κήδε' ἐφήκεν.

(Homer frequently uses the names of certain preponderating tribes, such as Achaeans, Danaans, Argives, for the Greeks. The word Hellenes (Ἕλληνες) is of later origin.)

² *Plut. Alex.* 11 : ὑπεξελόμενος δὲ τοὺς ἱερεῖς καὶ τοὺς ξένους τῶν Μακεδόνων ἅπαντας καὶ τοὺς ἀπὸ Πινδάρου γεγονότας καὶ τοὺς ὑπεναντιωθέντας τοῖς ψηφισαμένοις τὴν ἀπόστασιν ἀπέδοτο τοὺς ἄλλους περὶ τριωμυρίου γενομένους.

³ *Polyb.* xvi. 33 : . . . τοὺς ἱερεῖς καὶ τὰς ἱερείας ἐκπέμπειν μετὰ στεμμάτων πρὸς τὸν Φίλιππον, δεησομένους καὶ παραδιδόντας αὐτῷ τὴν πόλιν.—Cf. *Liv.* xxxvii. 9.

⁴ Cf. *Thuc.* vi. 69.

the Lacedaemonian priests who carried before the armies the sacrificial fire at the time of an engagement with the enemy, were usually free from violence.¹ Again, those individuals in general who journeyed to the common Hellenic temples or to the public games enjoyed a similar immunity, and were considered to be under the special protection of the States through whose territory they passed. The Aetolians, in particular, protected also the Dionysiac musicians, actors, and other functionaries engaged in the feasts of Dionysus. An inscription speaks of the usual ἀσφάλεια (personal security) and ἀσυλία (inviolability) accorded to these privileged persons, . . . τὰν ἀσφάλειαν καὶ ἀσυλίαν εἶμεν αὐτοῖς τὰ ἀπ' Αἰτωλῶν καὶ τῶν ἐν Αἰτωλίᾳ κατοικούντων.²

The same religious conception is said to have restrained Greeks from laying hands on the Lacedaemonian kings, who, though leading armies in the field, were held to be invested with a sacred character, on account of their performance of sacred rites, and owing to their descent from Hercules. Plutarch says that the enemies of Sparta manifested a strong reluctance to assault her kings when encountered even in the heat of battle, and turned aside through veneration of their exalted position.³

The right of asylum has already been considered,⁴ but it will be convenient to refer to it briefly in this connection. Violations of this right were universally thought to call down on the offenders the dire retribution of the gods. When Cassandra (daughter of Priam) was torn away by Ajax Oileus, king of the Locri, from the shrine of Athene, due expiation was exacted.⁵ The 'common laws of the Greeks,' κοινὰ τῶν Ἑλλήνων

Right of
asylum.

¹ Cf. Herodot. viii. 6. ² *Corp. inscrip. Graec.* 3046, ll. 11-13.

³ Plut. *Agis*, 21: βασιλεῖ γὰρ, ὡς εἶοικε, Λακεδαιμονίων οὐδὲ οἱ πολέμοι ῥαδίως ἐν ταῖς μάχαις ἀπαντῶντες προσέφερον τὰς χεῖρας, ἀλλ' ἀπετρέποντο δεδιότες καὶ σεβόμενοι τὸ ἀξίωμα.

⁴ See vol. i. pp. 347 *seq.*

⁵ Polyb. xii. 5.—Cf. Virg. *Aen.* i. 39 *seq.*

νόμιμα,¹ demanded that reverence should be paid to sanctuaries and temples, and that no violation should be offered to those who sought shelter therein. This immunity was bestowed on fugitives from the enemy, on criminals, and even on such as were condemned to death ;² to take their lives under these circumstances would be universally accounted a gross act of sacrilege, *πράγμα πάντων ἀσεβέστατον*,³—conduct that fell within the category of *ἱεροσυλία*,⁴ or *ἱεροσύλησις*,⁵ sacrilege in general ; and persons guilty of such desecration rendered themselves liable to the severest penalties, as well as to divine imprecations against themselves and their descendants.⁶ Thus a terrible earthquake visited Sparta because, as it was thought, the Lacedaemonians had put to death certain helots who had taken refuge in the temple of Poseidon at Taenarus,⁷ and the curse of Athene of the Brazen House was likewise attributed to the murder of Pausanias in the precincts of the temple.⁸ When a city was stormed, fugitives who sought refuge in sanctuaries were generally spared ; practices to the contrary always and everywhere called forth strong condemnation.

Suppliants.

Apart from fugitives who claimed the protection of the presiding deities of the temples, it was also forbidden to slay suppliants who, in the course of an engagement in the field, laid down their arms and threw themselves on the mercy of the enemy. Oracles frequently pronounced suppliants to be inviolable. The Persians having demanded the surrender of Pactyas, a Lydian, who had fled for shelter to Cyme, the oracle at Branchidae condemned the intended seizure and delivery of the suppliant.⁹ The Dodonian god consistently enjoined on his votaries the duty to grant

¹ Diod. xix. 63.

² Plut. *De superst.* 4.

³ Polyb. iv. 35.

⁴ Cf. Xenoph. *Apol.* 25 ; Plat. *Repub.* 443 A.

⁵ Diod. xvi. 14.

⁶ Cf. Thuc. i. 126, 134.

⁷ Thuc. i. 128.

⁸ *Ibid.*

⁹ Herodot. i. 157-159 ; cf. *ibid.* viii. 53-54.—Cf. vol. i. pp. 359-360, as to the story of Pactyas, in connection with the practice of extradition, and the religious scruples against such surrender.

protection to such refugees; and the fate of Helice, says Pausanias, is an indication that divine wrath against offenders cannot be averted.¹ In accordance with an ancient oracle of Delphi current among the Lacedaemonians, suppliants of the Ithomaeon Zeus were to be spared; and so when Ithome capitulated to Sparta, 455 B.C., the Messenians, together with their wives and children, were allowed to go free, and received from Athens a home at Naupactus.² The Plataeans, in their speech to the Lacedaemonian judges, 427 B.C., exhorted them not to bring infamy upon themselves by putting suppliants to death; and, apart from the demands of piety, they urged that they had surrendered themselves, and stretched out their hands to the captors, and that Hellenic law forbids the slaying of suppliants.³

Similarly, the Romans believed—though, perhaps, not with so strong a conviction as that of the Hellenic peoples—that violation of the right of sanctuary was punished by the gods; and instances of this were thought to be the terrible calamity that befell the censor Fulvius Flaccus, and the untimely end of Sulla. Positive law also prescribed severe punishment for those guilty of *sacrilegium* of this character.⁴ The principle was long in existence in Rome; its firm establishment was attributed to Romulus.⁵ There is an extant epigraphic document showing the formal recognition by the senate of the sanctuary at Teos, and the due respect paid to it.⁶ Protection was also afforded by the abode of the flamen Dialis⁷ (the priest

¹ Pausan. vii. 25. 1-2; cf. iv. 24. 7.

² Thuc. i. 103: ἦν δέ τι καὶ χρηστήριον τοῖς Λακεδαιμονίοις Πυθικὸν πρὸ τοῦ, τὸν ἰκέτην τοῦ Διὸς τοῦ Ἴθωμήτα ἀφιέναι. ἐξῆλθον δὲ αὐτοὶ καὶ παῖδες καὶ γυναῖκες.

³ Thuc. iii. 58: ὥστε καὶ τῶν σωμάτων ἄδειαν ποιοῦντες ὅσα ἂν δικάζοιτε, καὶ προνοοῦντες ὅτι ἐκόντας τε ἐλάβετε καὶ χεῖρας προῦχομένους (ὁ δὲ νόμος τοῖς Ἑλλησι μὴ κτείνειν τούτους),...

⁴ See vol. i. p. 358.

⁵ Dion. Hal. ii. 15.—Cf. Dion Cass. xlvii. 19; Liv. i. 8. 5.

⁶ Corp. inscrip. Graec. 3045.

⁷ Aul. Gell. x. 15.

of Jupiter), by the flags of the legions,¹ and by the images and statues of the emperors.²

Safe-conducts.

In addition to these general exemptions from the rigour of warfare, immunity was often extended to certain individuals temporarily, and under particular circumstances. Thus, the granting of safe-conducts was a common practice both in Greece and in Rome. The word *ἄδεια* (literally, freedom from fear) is often used by Greek writers to designate generally a specific guarantee given to individuals to ensure their immunity from maltreatment when by their position as enemies or by their conduct they had previously become liable to severe measures. Herodotus makes use of the term to express a free pardon; as, for example, where Rhampsinitus, the king of Egypt, offered security of this kind to a certain thief if he would voluntarily disclose his identity.³ Alcibiades, before surrendering to Sparta, claimed the concession of *ἀδεία*, ἀξιῶν ἀδειαν αὐτῷ γενέσθαι.⁴ Again, the term *ἀσφάλεια* (usually associated to *ὑσουλία*) is of very frequent occurrence in the records both of pacific transactions between States and of their belligerent operations. It indicates personal inviolability and exemption from the forcible dispossession of property, guaranteed, under certain circumstances, by those public authorities or private citizens who, on account of alleged injuries by the other party concerned or by their government, might otherwise legitimately resort to measures of reprisal and retaliation.⁵

In Rome the most usual expression for safe-conduct is *fides*, or more exactly *fides publica*, which denotes a

¹ Tacit. *Ann.* i. 39.

² *Ibid.* iii. 36.

³ Herodot. ii. 121. 6.

⁴ Plut. *Alcib.* 23.

⁵ Cf. vol. i. pp. 143, 145, 155; *supra*, p. 150, in the affair of Cos and Calymna, where certain citizens of the latter State received *ἀσφάλεια*, to enable them to proceed to Cos in safety for the purpose of making investigations into disputed accounts, and for the cross-examination of deponents unable to attend the court at Cnidus. See also *infra*, chap. xxvii., on measures short of war.

formal undertaking and guarantee on the part of the State itself, or given by a Roman general on his own initiative, to respect the person of one who was otherwise liable to capture. Thus Jugurtha of Numidia was brought to Rome under a safe-conduct,—“*eum interposita fide publica Romam duceret.*”¹ Similarly, Amynder, king of Athamania, having been put under the protection of a safe-conduct, came into the Roman camp, 189 B.C.,—“*Amynder quoque Athamanum rex fide accepta venerat in castra Romana.*”² Thurrus, the chief of some Spanish tribes, came in the same manner to the camp of Gracchus to plead for the lives of some of his distinguished countrymen who had been made prisoners by the Romans, 179 B.C.,—“*audita suorum clade, missis qui fidem venienti in castra ad Gracchum peterent, venit.*”³

A rarer term for safe-conduct is *diploma*; but this was properly a letter of introduction given to distinguished Romans journeying abroad.⁴

That belligerents should unreservedly permit their adversaries to bury the dead was enforced by the law of war. The principle was fully recognized even in prehistoric times, though, no doubt, we read of occasional practices to the contrary. But these infractions were exceptional, and were admittedly opposed to established custom; so that they cannot be said to furnish any index to the conduct and sentiment which obtained universally. Thus in the *Iliad* we find that the body of the foe—though, as a rule, only of the chiefs—was sometimes mutilated or thrown to the wild beasts and birds of prey.⁵ Hector was resolved to fix the head of Patroclus on the stakes of the wall.⁶ Achilles offered indignities to the body of Hector. On the other hand, Hector, in his challenge, paid homage to the sanctions

Burial of the dead.

In Greece.

¹ Sall. *Jug.* 32.

² Liv. xxxviii. 9.

³ Liv. xl. 49.

⁴ Sen. *Clem.* i. 10.

⁵ Cf. *Iliad*, i. 4; viii. 379; xvi. 559; xxiii. 21.

⁶ *Iliad*, xviii. 176.

of universal law by declaring as a condition of the combat that the victor was to give up the body of the vanquished for due burial.¹ And, further, in spite of Achilles' ill-treatment of the dead Trojan hero, the real humane feeling of the Hellenic race is shown by the story that the corpse was preserved by the gods from corruption and defacement, until due obsequies were ultimately rendered to it in Troy.² Similarly, Achilles refrained from committing any outrage on the body of Eëtion, and even erected a monument to him.³ After an engagement in the field the combatants often departed peacefully, and were at liberty to perform the obsequies to their dead.⁴ The defeated party usually asked for a truce for this purpose, and very rarely indeed was such request refused. Agamemnon readily declared to Idæus, the herald, that he did not grudge the enemy the cremation of those who fell in the conflict—

ἀμφὶ δὲ νεκροῖσιν, κατακήμεν οὔτι μεγάριω.⁵

In more historical times, still greater respect was shown to the enemy fallen in battle. "... From a very early period," as Jebb says,⁶ "Hellenic feeling was shocked at the thought of carrying enmity beyond the grave, and withholding those rites on which the welfare of the departed spirit was believed to depend. The antiquity of the maxim that, after a battle, the conquerors were

¹ *Iliad*, vii. 76 *seq.*, and cf. especially the declaration (ll. 84-86):

τὸν δὲ νέκυν ἐπὶ νῆας εὖσσέλμους ἀποδώσω,
ὄφρα ἐ ταρχύσωσι καρηκομόωντες Ἀχαιοὶ,
σῆμά τέ οἱ χεύωσιν ἐπὶ πλατείῃ Ἑλλησπόντῳ.

² *Iliad*, xxiv. 411 *seq.*

³ *Iliad*, vi. 416-418:

οὐδέ μιν ἐξενάριξε· σεβάσασατο γὰρ τόγε θυμῷ·
ἄλλ' ἄρα μιν κατέκηγε σὺν ἔντεσι δαιδαλέοισιν,
ἦδ' ἐπὶ σῆμ' ἔχεεν.

⁴ *Iliad*, vii. 299 *seq.*

⁵ *Iliad*, vii. 408.—Cf. vii. 375-377.

⁶ Introduction to his edition and translation of Sophocles' *Antigone*, sect. xxii.

bound to allow the vanquished to bury their dead is proved by the fact that it was ascribed either to Theseus¹ or to Heracles."² In the *Thebais*, an epic narrating the conflict between the brothers Eteocles and Polynices of Thebes, Statius relates that, after their death, burial was refused by the new king in the case of the dead followers of Polynices; whereupon great indignation was felt throughout Hellas, and Theseus, the king of Athens, took up arms. Addressing his army, he invoked the sacred rules of the law of nations, described by him as the law of the entire world, the universal convention of the human race,—“*terrarum leges, et mundi foedera.*”³ Sophocles clearly shows his sympathy with Antigone in her deliberate disobedience of Creon’s edict against burying Polynices,⁴ as her defiance was actuated by fundamental human feeling in harmony with divine law and inveterate custom. Elsewhere the poet again represents the humaner spirit of his age by making Odysseus prevail on Agamemnon to grant burial to Ajax, who had, indeed, by his murderous design on the Atreidae, deservedly incurred their resentment and that of the Greek army, and who fully realized the heinous nature of his crime, and his consequent liability to be refused all funeral ceremonies,—so that his only prayer to Zeus was that his body might not be thrown to the dogs and birds.⁵ Odysseus, however, thus successfully pleaded on his behalf: “Listen, then.⁶ For the love of the gods, take not the heart to cast forth this man unburied so ruthlessly; and in no wise let violence prevail with thee to hate so utterly that thou shouldst trample justice under foot. To me also this man was once the worst foe in the army,—from the day that I became master of the arms of Achilles; yet,

¹ Plut. *Thes.* 29.

² Aelian. *Var. hist.* xii. 27.

³ Statius, *Thebais*, xii. 642.

⁴ Soph. *Antig.* 450 *seq.*

⁵ Soph. *Ajax*, 829-830:

καὶ μὴ πρὸς ἐχθρῶν του κατοπτευθεὶς πάρος
ῥιφθῶ κυσὶν πρόβλητος οἰωνοῖς θ' ἔλωρ.

⁶ Jebb’s translation.

for all that he was such toward me, never would I requite him with indignity, or refuse to avow that, in all our Greek host which came to Troy, I have seen none who was his peer, save Achilles. It were not just, then, that he should suffer dishonour at thy hand; 'tis not he, 'tis the law of Heaven that thou wouldst hurt. When a brave man is dead, 'tis not right to do him scathe—no, not even if thou hate him.”¹

In reference to the Sophoclean treatment of this subject, particularly with regard to the conflict between Creon and Antigone, the writer quoted above observes: ² “In giving that issue to his play, Sophocles was doing what the general feeling of his own age would strongly demand. Greeks of the fifth century B.C. observed the duty towards the dead, even when warfare was bitterest, and when the foe was barbarian. The Athenians buried the Persians slain at Marathon, as the Persians buried the Lacedaemonians slain at Thermopylae. A notable exception may, indeed, be cited; but it is one of those exceptions which forcibly illustrate the rule. The Spartan Lysander omitted to bury the Athenians who fell at Aegospotami; and that omission was remembered, centuries later, as an indelible stigma upon his name.”³

¹ Soph. *Ajax*, 1332 seq.:

ΟΔ. ἄκουέ νυν. τὸν ἄνδρα τόνδε πρὸς θεῶν
μὴ τλήῃς ἄθαπτον ὦδ' ἀναλήγῃτως βαλεῖν·
μηδ' ἢ βία σε μηδαμῶς νικησάτω
τοσόνδε μισεῖν ὥστε τὴν δίκην πατεῖν.
κάμοι γὰρ ἦν ποθ' οὗτος ἔχθιστος στρατοῦ,
ἐξ οὗ κράτησα τῶν Ἀχιλλείων ὄπλων·
ἀλλ' αὐτὸν ἔμπας ὄντ' ἐγὼ τοιόνδ' ἐμοὶ
οὐκ ἀντατιμάσαιμ' ἄν, ὥστε μὴ λέγειν
ἐν ἄνδρ' ἰδεῖν ἄριστον Ἀργείων, ὅσοι
Τροίαν ἀφικόμεσθα, πλὴν Ἀχιλλέως.
ὥστ' οὐκ ἂν ἐνδίκως γ' ἀτιμάζοιτο σοι·
οὐ γάρ τι τοῦτον, ἀλλὰ τοὺς θεῶν νόμους
φθείροις ἄν' ἄνδρα δ' οὐ δίκαιον, εἰ θάνοι,
βλάπτειν τὸν ἐσθλόν, οὐδ' ἐὰν μισῶν κυρῆς.

² Introduction to the *Antigone*, sect. xxii.

³ Cf. Pausan. ix. 32. 6: Φιλοκλέα γὰρ Ἀθηναῖον ἐν Αἰγὸς ποταμοῖς καὶ αὐτὸν στρατηγούντα καὶ Ἀθηναίων τῶν ἄλλων ὅσον

After the defeat of the Persians by Pausanias, Lampon, one of the most eminent of the Aeginetae, advised him (as has already been referred to) to impale Mardonius, as a retaliation for the like treatment of Leonidas, the Spartan general's uncle, who had fallen at Thermopylae. But Pausanias indignantly repudiated the suggestion, and remarked that to offer indignities to the dead was condemned by the laws of civilized warfare.¹

Truces for performing the last duties to the dead, *σπονδαὶ εἰς νεκρῶν ἀναίρεσιν*, were usually concluded at the close of a conflict. A non-Hellenic example of this practice may be mentioned in reference to the battle of Rhabia, 217 B.C., where Antiochus was defeated by Ptolemy. The vanquished party having reached Gaza despatched an embassy to the victor to get leave to pick up their dead, and accordingly obtained a truce for performing the customary funeral rites.² In case of refusal, exceptionally strong reasons were necessary; as, for example, in the second sacred war, where the Phocidians had maliciously violated the law of nations by pillaging the Delphian temple and insulting its god.³ In the battle of Delium, 424 B.C., the Boeotians refused the Athenians permission to bury their dead, on the ground that they had been guilty of sacrilege, and transgression against universally recognized Hellenic law,—*ὅτι οὐ δικάως δράσειαν παραβαίνοντες τὰ νόμιμα τῶν Ἑλλήνων*;⁴ but after the capture of Delium, they delivered the dead at the renewed request of the Athenian herald.⁵ And, conformably to such mitiga-

Truces for performing obsequies.

τετρακισχιλίουσ ἀιχμαλώτους ὄντας ἀπέκτεινεν ὁ Λύσανδρος, καὶ σφισιν οὐδὲ ἀποθανοῦσιν ἐπήνεγκε γῆν, ὃ καὶ Μήδων τοῖσ ἀποβᾶσιν εἰς Μαραθῶνα ὑπῆρξε παρ' Ἀθηναίων, καὶ αὐτῶν Λακεδαιμονίων τοῖσ πεσοῦσιν ἐν Θερμοπύλαισ ἐκ βασιλέωσ Ξέρξου.

¹ Herodot. ix. 79.

² Polyb. v. 86: *... κακῆ καταστρατοπεδεύσασ καὶ διαπεμφάμενος περὶ τῆσ τῶν νεκρῶν ἀναιρέσεωσ, ἐκήδευσε τοὺσ τεθνεῶτασ ὑποσπόνδουσ.*

³ Diodor. xvi. 25.

⁴ Thuc. iv. 97.

⁵ Thuc. iv. 101.

tions, Plato lays down that the dead must not be despoiled, or their burial hindered.¹

In Rome.

The Romans, too, observed these principles. Even as far back as the epoch of Latinus, the king of the Laurentians, we find, according to Virgil's narrative, the king's ambassadors going to Aeneas to ask for a two days' truce for burying their dead; on which occasion the envoys pointed out that the death of the combatants at once obliterated their enemy character:

“nullum cum victis certamen et aethere cassis.”²

The embassy of Latinus was welcomed, and the request readily granted:

“nunc ite et miseris supponite civibus ignem.”³

In 189 B.C. after a conflict between the Macedonians under Philip and the Athamanians and Aetolians, permission to bury the dead was given under a truce,—“postea per indutias sepeliendi caesos potestas facta est.”⁴

The conclusion of truces.

Truces (σπονδαί; ἐκεχειρία,⁵ literally ‘a holding of hands,’ hence, a cessation of hostilities) were concluded also for other reasons than for performing the solemnities of sepulture. They were established for the exchange, ransom, or release of prisoners of war,—ὑποσπόνδους ἀπίεναι τοὺς αἰχμαλώτας.⁶ They were sometimes granted when a besieged city offered to surrender on certain conditions. Thus, on the capitulation of Potidaea, 430 B.C., the citizens, as well as the foreign troops, were to come out of the city, the men with one garment, the women with two, and they were allowed a certain sum of money for their journey.

¹ *Repub.* v. 469 D: Ἐατέον ἄρα τὰς νεκροσυλίας καὶ τὰς τῶν ἀναιρέσεων διακωλύσεις; Ἐατέον μέντοι, ἔφη, νῆ Δία.

² *Aen.* xi. 104.

³ *Aen.* xi. 119.

⁴ *Liv.* xxxviii. 2.

⁵ As to the difference between εἰρήνη, σπονδαί, and ἐκεχειρία, and the exact significance of the latter, see vol. i. p. 376.

⁶ *Plut. Sol.* 9.

Accordingly they departed under a safe-conduct, *ὑπόσπονδοι ἐξήλθον*, and sought fresh homes.¹ In 425 B.C., on the proclamation of Cleon and Demosthenes, the Lacedaemonians agreed to surrender at discretion to the Athenians; whereupon a truce was made, and the two Athenian commanders then held a parley—*ξυνήλθον ἐς λόγους*—with Styphon, the Lacedaemonian leader. Afterwards, the Spartans sent a herald and removed their own dead.²

An armistice frequently served as a preliminary to formal peace negotiations; and here we find three kinds of functionaries employed, namely, heralds, ambassadors, and their suites furnished with safe-conducts, *κήρυκι δὲ καὶ πρεσβείᾳ καὶ ἀκολούθοις . . . σπονδὰς εἶναι . . .*³ Thus in 423 B.C. Athens and Sparta, including their respective allies, made a truce for a year with a view to subsequently establishing peace on a secure basis by means of diplomatic methods, and to effect a balance between the contending powers. During the continuance of the armistice (*ἐκεχειρία*), says Thucydides, fresh negotiations for a final peace were constantly carried on.⁴ Similarly, a thirty days' truce was offered to Philip by the Aetolians through the Rhodian and Chian ambassadors;⁵ and Antiochus, after his unsuccessful siege of Dura in Phoenicia, agreed with Ptolemy's ambassadors to a suspension of hostilities for a period of four months.⁶

As an example of a formal engagement of this nature, it will be of interest to observe the provisions laid down in the truce between Athens and Lacedaemon of the year 423 B.C., which secured for all the parties concerned liberty of access to the oracle at Delphi, and the protection of its treasures, insisted on the principle

¹Thuc. ii. 70.

²Thuc. iv. 38: . . . οἱ δὲ Λακεδαιμόνιοι κήρυκα πέμψαντες τοὺς νεκροὺς διεκομίσαντο.

³Thuc. iv. 118.

⁴Thuc. iv. 119: Ἡ μὲν δὴ ἐκεχειρία αὕτη ἐγένετο, καὶ ξυνήεσαν ἐν αὐτῇ περὶ τῶν μειζόνων σπονδῶν διὰ παντὸς ἐς λόγους.

⁵Polyb. v. 28.

⁶Polyb. v. 66.

Armistice and
peace
negotiations.

Truce between
Athens and
Sparta.

of 'uti possidetis,' prohibited Peloponnesian vessels of war from sailing in their territorial waters, and provided for arbitration, for diplomatic negotiations by the accredited plenipotentiaries of the contracting States, and for the extradition of deserters. It appears that the conditions had been first agreed upon at Sparta, and then submitted to Athens for acceptance; that resolutions of the Athenian assembly were returned to Sparta, and there approved; and that finally followed the formal ratification by certain appointed individuals on behalf of the respective parties to the truce. The following were the conditions as reported by Thucydides:

Access to the temple in safety.

(1) 'Concerning the temple and oracle of the Pythian Apollo, it seems good to us that any one who will shall ask counsel thereat without fraud and without fear, according to his ancestral customs. To this we, the Lacedaemonians and their allies here present, agree, and we will send heralds to the Boeotians and Phocians, and do our best to gain their assent likewise.

Protection of its treasures.

(2) 'Concerning the treasures of the god, we will take measures for the detection of evil-doers, both you and we, according to our ancestral customs, and any one else who will, according to his ancestral customs, proceeding always with right and equity. Thus it seems good to the Lacedaemonians and their allies in respect of these matters.

The principle of 'uti possidetis.'

(3) 'It further seems good to the Lacedaemonians and their allies that, if the Athenians consent to a truce, each party shall remain within his own territory, retaining what he has. The Athenians at Coryphasium shall keep within the hills of Buphras and Tomeus. They shall remain at Cythera, but shall not communicate with the Lacedaemonian confederacy, neither we with them nor they with

us. The Athenians who are in Nisaea and Minoa shall not cross the road which leads from the gates of the temple of Nisus to the temple of Poseidon, and from the temple of Poseidon goes direct to the bridge leading to Minoa; neither shall the Megarians and their allies cross this road; the Athenians shall hold the island which they have taken, neither party communicating with the other. They shall also hold what they now hold at Troezen, according to the agreement concluded between the Athenians and Troezenians.

(4) 'At sea the Lacedaemonians and their allies may sail along their own coasts and the coasts of the confederacy, not in ships of war, but in any other rowing vessel whose burden does not exceed five hundred talents.

Naval expeditions limited.

(5) 'There shall be a safe-conduct both by sea and land for a herald, with envoys, and any number of attendants which may be agreed upon, passing to and fro between Peloponnesus and Athens, to make arrangements about the termination of the war and about the arbitration of disputed points.

Safe-conduct.

(6) 'While the truce lasts neither party, neither we nor you, shall receive deserters, either bond or free.

Deserters.

(7) 'And we will give satisfaction to you and you shall give satisfaction to us according to our ancestral customs, and determine disputed points by arbitration and not by arms.

Principle of *ius originis*.

'These things seem good to us, the Lacedaemonians, and to our allies. But if you deem any other condition more just or honourable, go to Lacedaemon and explain your views; neither the Lacedaemonians nor their allies will reject any just claim which you may prefer.

Pleni-
potentiaries.

‘And we desire you, as you desire us, to send envoys invested with full powers.

Length of
truce.
Festival truces.

‘This truce shall be for a year.’¹

Further, in addition to the discontinuance of hostilities by explicit agreements, the commencement of a festival was deemed *ipso facto* to suspend warlike operations; though usually there was also a formal proclamation of a truce (*ἐκεχειρία*), in order that all, including the belligerents, might have unrestricted access to the common games and religious ceremonies. The time during which such cessation of arms lasted was termed *ἱερομηνία*,² or *ἱερομήνια*³ (that is, the ‘holy days of the month’).

‘Peace-heralds.’

In the first place peace was proclaimed in the country where the games were to take place, then ‘peace-heralds’ were despatched to other parts of Greece to make a similar announcement. In this connection it may be observed that neither acquiescence in the declaration nor the practice consequent thereon was quite uniform or consistent. It would seem, speaking generally, that only those cities where a formal proclamation had been made were considered to be bound by the sacred truce, or to be able to take advantage of it;—at least, we find that States in whose territory no proclamation to that effect had been publicly made sometimes repudiated the various obligations, which a formal declaration had imposed on other communities. Thus in 420 B.C., during the celebration of the Olympic games, the Eleans excluded the Lacedaemonians from the temple, thereby preventing them from contending in the games, as well as from offering sacrifices, because the latter refused to pay the fine inflicted on them according to Olympic law for bringing an armed force against the fortress of Phyrus and Lepreum during the existence of the truce.⁴

¹Thuc. iv. 118.

²Thuc. iii. 56, 65.

³Thuc. v. 54.

⁴Thuc. v. 49: καὶ Λακεδαιμόνιοι τοῦ ἱεροῦ ὑπὸ Ἡλείων εἴρχθησαν, ὥστε μὴ θύειν μηδ' ἀγωνίζεσθαι, οὐκ ἐκτίνοντες τὴν δίκην αὐτοῖς, ἣν ἐν τῷ Ὀλυμπιακῷ νόμῳ Ἡλείοι κατεδικάσαντο αὐτῶν, φάσκοντες σφᾶς ἐπὶ Φύρκον τε τείχος ὄπλα ἐπενεγκεῖν καὶ ἐς Λέπρεον αὐτῶν ὀπίστας ἐν ταῖς Ὀλυμπιακαῖς σπονδαῖς ἐσπέμψαι.

The Lacedaemonian envoys, however, maintained that the sentence was unjust, inasmuch as the truce had not been announced in Sparta when their troops entered Lepreum, and that as soon as it was proclaimed there, all hostilities immediately ceased.¹

The Dorian States generally refrained not only from aggressive operations during the festival, but were even reluctant to oppose hostile invasions; as was the case with the Spartans on the occasion of the Carnean festival (held in honour of Apollo *Κάρνειος*),² and the Hyacinthia (in honour of Hyacinthos),³ in spite of the menacing advance of Xerxes. In 419 B.C. the Lacedaemonians preparing to make war on Argos were restrained by the approach of the 'sacred month.' The Argives, however, disregarding this obligation, continued their expedition against Epidaurus, and invaded and devastated its territory. The Epidaurians accordingly called upon their allies for assistance; but some of them, pleading the sanctity of the month, refused to come, and others proceeded no further than the frontier of Epidauria.⁴ Again, the Plataeans pleading before the Lacedaemonian judges, 427 B.C., in defence of their own State as against Thebes, urged that the Thebans, apart from other injuries inflicted on the Plataeans, even attempted to seize their city after a truce had been proclaimed, and at a holy season; and that, therefore, their countrymen justly and conformably to universal law defended themselves and punished the aggressor.⁵ The Thebans, in their rejoinder, insisted

¹ *Ibid.*: Λακεδαιμόνιοι δὲ πρέσβεις πέμψαντες ἀντέλεγον μὴ δικαίως σφῶν καταδικάσθαι, λέγοντες μὴ ἐπηγγέλθαι πω ἐς Λακεδαίμονα τὰς σπονδὰς, ὅτ' ἐσέπεμψαν τοὺς ὀπλίτας . . . καὶ ὄπλα οὐδαμῶσε ἔτι αὐτοῖς ἐπενεγκεῖν.

² Herodot. vii. 206.

³ Herodot. ix. 11.

⁴ Thuc. v. 54: Ἐπιδαυριοὶ δὲ τοὺς ξυμμάχους ἀπεκαλοῦντο· ὧν τινὲς οἱ μὲν, τὸν μῆνα προῦφασίσαντο, οἱ δὲ καὶ ἐς μεθορίαν τῆς Ἐπιδαυρίας ἐλθόντες ἠσύχαζον.

⁵ Thuc. iii. 56: πόλιν γὰρ αὐτοὺς τὴν ἡμετέραν καταλαμβάνοντας ἐν σπονδαῖς καὶ προσέτι ἱερομηνία ὀρθῶς ἐτιμωρησάμεθα, κατὰ τὸν πᾶσι νόμον καθεστῶτα, τὸν ἐπιόντα πολέμιον ὅσιον εἶναι ἀμύνεσθαι.

they had been invited to take those proceedings by the most influential Plataeans, and readily admitted that, had they on their own initiative carried hostilities against the city during the existence of the truce, their act would have been an offence against Hellenic international law.¹

It is, no doubt, possible to exaggerate the effects of proclaiming an armistice of this description ; and it is incorrect to infer (as Schömann has pointed out) that it operated immediately and everywhere in Greece to bring about a cessation of hostilities between belligerents in the field.² A deliberate breach of the obligation was committed, for example, by Agesipolis, king of Sparta,³ by the Macedonians under Philip,⁴ and by the Achaeans.⁵ Nevertheless, the institution of the great games, the Olympian, the Isthmian, the Nemean, the Pythian, together with the convening of the solemn general assembly, *πανήγυρις*, to which all Greek States had access, each sending its representative (*θεωρός*), did much to promote pacific relationships between the various Hellenic communities, and at the same time to mitigate the rigours of warfare. In his *Panegyricus*, written about 380 B.C., Isocrates observed that those who established the great festivals were rightly praised for handing down to the Greeks a custom which induced them to conclude treaties with one another, to reconcile the enmities that existed between them, and to assemble in one common gathering ; by taking part in the same prayers and sacrifices, they were reminded of the original bond of kinship between them, and thus being

¹ Thuc. iii. 65 : *εἰ μὲν γὰρ ἡμεῖς αὐτοὶ πρὸς τε τὴν πόλιν ἐλθόντες ἐμαχόμεθα καὶ τὴν γῆν ἐδουλοῦμεν ὡς πολέμιοι, ἀδικοῦμεν.*

² *Griechische Alterthümer*, vol. ii. pp. 18-19 : " Weiter aber darf man den Begriff dieser festlichen Befriedung (*ἐκεχειρία*) nicht ausdehnen ; dass alle Feindseligkeiten zwischen kriegführenden Staaten während der festlichen Zeit geruht hätten, wie es sich einige vorgestellt haben, ist nicht wahr."

³ Xenoph. *Hellen* iv. 7.

⁴ Aeschin. *De fals. leg.* 12.

⁵ Plut. *Arat.* 28.

Limitations
of this
institution.

Its influence.

more kindly disposed towards each other for the future, they renewed old friendships, and made new ones.¹

In Rome also truces and armistices (*indutiae*) were freely granted for varying periods of time, whether for the burial of the dead, for the conducting of negotiations, or for other reasons. Their violation, by doing injury either to person or property, was severely condemned as an offence both against conventional law and divine law; and the Roman culprit was surrendered to the enemy by the fetials, who likewise demanded the delivery of foreign subjects guilty of the like infringement.² Livy relates how Lucius Aemilius accused the Ligurians of transgressing the law of nations by their hostile proceedings against the Roman camp (183 B.C.) during a truce which had actually been granted them on their own entreaty,—“*fraudem hostium incusans, qui pace petita, indutiis datis, per ipsum indutiarum tempus contra ius gentium ad castra oppugnanda venissent.*”³ When Marcellus and Appius marched against Leontini, 214 B.C., the ardour of the troops was so great (says Livy) on account of their indignation at the slaying of the Roman guards during the negotiations for a peace, that they took the town by storm on the first assault.⁴ And even in the case of some trifling acts, “*quaedam parva,*” committed during the continuance of a truce, complaints were laid before the council of the

The practice of Rome as to truces.

¹ Isoc. *Panegy.* 43 : Τῶν τοίνυν τὰς πανηγύρεις καταστησάντων δικαίως ἐπαινουμένων, ὅτι τοιοῦτον ἔθος ἡμῖν παρέδοσαν ὥστε σπειραμένους καὶ τὰς ἔχθρας τὰς ἐνεστηκνίας διαλυσαμένους συνελθεῖν εἰς ταῦτόν, καὶ μετὰ ταῦτ' εὐχὰς καὶ θυσίας κοινὰς ποιησαμένους ἀναμνησθῆναι μὲν τῆς συγγενείας τῆς πρὸς ἀλλήλους ὑπαρχούσης, εὐμενεστέρως δ' εἰς τὸν λοιπὸν χρόνον διατεθῆναι πρὸς ἡμᾶς αὐτοὺς, καὶ τὰς τε παλαιὰς ξενίας ἀνανεώσασθαι καὶ καινὰς ἐτέρας ποιήσασθαι. . .—Cf. Plut. *Lycurg.* 1.

² Cf. Liv. xxx. 25, 37; xxxiii. 11, 12; xxxiv. 35.

³ Liv. xl. 27.

⁴ Liv. xxiv. 30 : “*Marcellus cum omni exercitu profectus in Leontinos, Appio quoque accito, ut altera parte aggredederetur, tanto ardore militum est usus ab ira inter condiciones pacis interfectae stationis, ut primo impetu urbem expugnarent.*”

Achaeans, 208 B.C., that the conduct was contrary to the faith of the convention.¹ Cicero referring to chicanery as a form of injustice, in connection with an over-subtle, unconscionable interpretation of the law,² gives as an example of such conduct the case of a general who once concluded a truce with the enemy 'for thirty days,' and ravaged his territory by night, alleging that the truce applied to the day, and not to the night.³

Breach of
truce.

No doubt there were, from time to time, abuses and violations of armistices. Thus Polybius relates that Garsyeris, an officer of Achaeus, concluded an armistice with the Selgians, but designedly prolonged the negotiations for a treaty, in order to give time for the arrival of Achaeus, and for the traitorous envoy of the adversary to mature his plot.⁴ Again, in the negotiations between Scipio and Syphax, king of the Numidians, 204 B.C., the latter was informed that the Roman commander was anxious for peace, but that the members of his council opposed it. Scipio despatched the embassy, says the historian, to avoid the appearance of a breach of truce, if he should carry out any hostile operation whilst negotiations for peace were still going on; for he considered that by taking this step he would remain free to act in whatever way he chose without flagrantly committing himself.⁵ No doubt, in surprising the Numidian and Carthaginian camps, after he had lulled the enemy into

¹ Liv. xxvii. 30: "... primo questi sunt quaedam parva contra fidem conventionis tempore indutiarum facta."

² Cic. *De offic.* i. 33: "existunt etiam saepe iniuriae cum omnia quadam et nimis callida et malitiosa iuris interpretatione."

³ *Ibid.*: "quum triginta dierum essent cum hoste indutiae factae, noctu populabatur agros, quod dierum essent pactae, non noctium indutiae."

⁴ Polyb. v. 74.

⁵ Polyb. xiv. 2: τὴν δὲ ἀποστολὴν ταύτην ὁ Σκιπίων ἐποιήσατο χάριν τοῦ μὴ δόξαι παρασπονδεῖν, ἐὰν ἔτι μενούσης τῆς ὑπὲρ τῶν διαλύσεων ἐπικηρυκείας πρὸς ἀλλήλους πράξῃ τι τῶν πολεμικῶν ἔργων. γενομένης δὲ τῆς ἀπορρήσεως ταύτης ἅπαν τὸ γινόμενον ἀνεπίληπτον ἔξεν ὑπέλαβε τὴν προαίρεσιν.

security by his peace proposals, suggested (as Mommsen observes) with more artifice than honour—"mehr listig als ehrlich angesponnenen Friedensverhandlungen,"¹—he felt less scruple in view of the notorious perfidy of his African adversaries. When the Carthaginian ambassadors, sent to Dionysius to propose peace, were informed that his terms were the evacuation of Italy, and the payment of a war indemnity, their countrymen, says Diodorus, at once resorted to their old arts of fraud and deceit; for they pretended to approve of the terms, and thus obtained a truce for a few days, so that Carthage might make greater preparations for war.²

The *indutiae* procured a cessation of arms between the contracting belligerents for a specified time.³ Aulus Gellius⁴ states that Varro (in his lost work, *Antiquitates rerum humanarum et divinarum*) defined *indutiae* in two ways: in one place he described a truce as a peace in camp for a few days, "*indutiae sunt pax castrensis paucorum dierum*";⁵ in another he spoke of truces as the 'holidays' of war, "*indutiae sunt belli feriae*." Both these definitions, comments Gellius, are characterized by conciseness, rather than by adequacy and precision;—for *indutiae* is not a 'peace,' inasmuch as the war really subsists though active hostilities for the time being are in abeyance, "*bellum manet, pugna cessat*"; further, it is not confined solely to the camp, nor is it concluded only for a few days,—it may last for months, or merely

The nature of
indutiae.

¹ *Röm. Gesch.* vol. i. p. 655.

² Diodor. xv. 16: . . . οἱ Καρχηδόνιοι τῇ συνήθει πανουργία κατεστρατήγησαν τὸν Διονύσιον. προσποιηθέντες οὖν εὐδοκείσθαι ταῖς ὁμολογίαις, ἔφησαν αὐτοῖς μὲν μὴ ὑπάρχειν κυρίου τῆς τῶν πόλεων παραδόσεως, ἵνα δὲ τοῖς ἄρχουσι διαλεχθῶσι περὶ τούτων, ἤξιωσαν τὸν Διονύσιον ὀλίγας ἡμέρας ἀνοχὸς ποιήσασθαι.

³ Cf. *Dig.* xlix. 15. 19. 1: "*Indutiae sunt, cum in breve, et in praesens tempus convenit, ne invicem se lacessant.*"

⁴ *Noct. Att.* i. 25.

⁵ Cf. Donatus, in *Eunuch.* sc. 1: "*Indutiae sunt pax in paucos dies, vel quod in diem dentur, vel quod in dies otium praebeant.*"

for so many hours.¹ The Greeks, he remarks, possess a more significant term, namely, ἐκεχειρία, to express an agreement for abstaining from battle for a given time. He derives the word *indutiae* from *inde uti iam*, and emphasizes that the essential point is the fixing of a certain day, after which the fighting may proceed again as before, *inde uti iam*. Further, he quotes Aurelius Opilius² to the effect that the arrangement is called a truce, because the enemies on both sides may hold personal communication with each other without any liability to injury, and without a sudden resumption of the combat.

Difference
between the
indutiae
and the *foedus*.

Thus the *indutiae* was distinguished from the *foedus*, which definitively established future peaceful relationships between the contracting parties. Further, the *foedus* was always concluded by the fetial ambassadors in the name of the Roman people; whereas an armistice could be established by the commander in the field, though, as a rule, only for a short period.

Period of
truce.

A term of twelve months was frequently allowed. Thus Livy states that the operations of Decius against the Etrurians, 307 B.C., were so successful that the latter sued the consul for an alliance; but only a truce for a year was granted to them.³ Similarly, in 293 B.C., the consul Carvilius granted the Faliscans a year's truce after they had sued for peace,—“et Faliscis pacem petentibus annuas indutias dedit . . .”⁴ It would appear, as Mommsen points out, that the competence of the

¹ Aul. Gell. *Noct. Att.* i. 25: “Sed lepidae magis atque iucundae brevitatis utraque definitio quam plana aut proba esse videtur. Nam neque pax est indutiae—bellum enim manet, pugna cessat—neque in solis castris neque ‘paucorum’ tantum ‘dierum’ indutiae sunt.”

² *Musae*, lib. i.: “Indutiae dicuntur quum hostes inter sese utrimque utroque, alter ad alterum, impune et sine pugna ineunt. Inde ab eo nomen esse factum videtur quasi initiae, hoc est, initus atque introitus.”

³ Liv. ix. 41: “circumferendoque passim bello tantum terrorem sui fecit, ut nomen omne Etruscum foedus ab consule peteret. ac de eo quidem nihil impetratum indutiae annuae datae.”

⁴ Liv. x. 46.

general in this respect extended to a maximum period of twelve months.¹ Longer terms had to be sanctioned by the government in Rome; in which case the fetial ambassadors usually officiated in the name of the Roman people, and in virtue of a *senatusconsult*.² We read of truces of two years, as given to the Etrurians (301 B.C.), who sent ambassadors to Rome to sue for peace;³ of eight years, to the Aequans (430 B.C.), who had solicited a treaty;⁴ thirty years, to the Etrurians (310 B.C.), who begged a peace and alliance;⁵ forty years, to the Faliscans and Tarquinians (350 B.C.);⁶ and even a hundred years, to the Caeritians (352 B.C.),⁷ and to the Veientes (717 B.C.).⁸ An indeterminate period was also possible; thus, in 197 B.C., instead of entering into an ordinary peace with the Achaeans, a cessation of hostilities was obtained which was, however, to subsist until the termination of the war with Philip of Macedon.⁹ In the later epochs of Rome, there was a tendency to shorten the duration of truces and armistices. For example, when Philip's offers regarding peace did not satisfy the congress at Nicaea, in Locris (198 B.C.), a reference to the senate

Fixed terms.

Indeterminate terms.

¹ *Röm. Staatsrecht*, vol. iii. pt. ii. p. 1165: "Unter den nach Kriegerrecht abgeschlossenen transitorischen Verträgen schliesst den wichtigsten, den Waffenstillstand, selbstverständlich der Feldherr allein ab. Insofern indess das ältere Völkerrecht den auf eine Reihe von Jahren abgeschlossenen Waffenstillstand dem Frieden gleich setzt, ist das Recht des Feldherrn Waffenstillstand zu gewähren wahrscheinlich auf die Maximalfrist eines Jahres begrenzt."

² Cf. Liv. vii. 20, in reference to the long truce with Caere, in Etruria,—"*factas in senatus consulta referri placuit.*"

³ Liv. x. 5. 12. ⁴ Liv. iv. 30. 1.

⁵ Liv. ix. 37. ⁶ Liv. vii. 22. 5; x. 37. 5; Dion. Hal. ix. 36.

⁷ Liv. vii. 20: "*itaque pax populo Caeriti data, indutiasque in centum annos factas in senatus consulta referri placuit.*"

⁸ Liv. i. 15: "*subacti Veientes pacem petitum oratores Romam mittunt . . . in centum annos indutiae datae.*"

⁹ Liv. xxxii. 39: "*pro pace cum Achaeis indutiae impetratae, donec bellum cum Philippo finiretur.*"

was agreed upon at the third day's meeting, and accordingly T. Quinctius Flaminius granted the Macedonian king a three months' truce, which was formally drawn up. The conditions of this were that Philip should complete his embassy to Rome within that time; that he should at once withdraw his garrisons from Phocis and Locris; and that no act of hostility should be committed by the Macedonians against the Roman allies during the subsistence of the truce.¹ The following year, in the congress at Tempe, a few months' suspension of arms was agreed to between the same parties, on the following terms: that Philip should pay Flaminius at once two hundred talents; deliver his son Demetrius and other nobles as hostages; and submit the entire matter of the pacification to the judgment of the senate. After exchanging mutual pledges of good faith, they departed on the understanding that if the engagement were not confirmed by the government in Rome, the Roman commander was to restore to Philip the money and the hostages.² Again, in 190 B.C. Publius Scipio granted the Athenian ambassadors, at their entreaty, a cessation of arms for six months;³ and in 193 B.C. the consul, Titus Quinctius, limited the truce to the Aetolians to ten days.⁴

When it
came into
effect.

The truce did not of necessity come into operation immediately on the conclusion of the negotiations relating thereto, but could be fixed to commence after

¹ Polyb. xvii. 10 (xviii. 10): Δοὺς γὰρ ἀνοχὰς διμήνουσ ἀὐτῷ, τὴν μὲν πρεσβείαν τὴν εἰς τὴν Ῥώμην ἐν τούτῳ τῷ χρόνῳ συντελεῖν ἐπέταξε. τὰς δὲ φρουρὰς ἐξάγειν παραχρῆμα τὰς ἐκ τῆς Φωκίδος καὶ Λοκρίδος, ἐκέλευσε. διετάξατο δὲ καὶ περὶ τῶν ἰδίων συμμάχων φιλοτίμως, ἵνα κατὰ μηδένα τρόπον μηδὲν εἰς αὐτοὺς ἀδίκημα γίγνηται κατὰ τοῦτον τὸν χρόνον ὑπὸ Μακεδόνων.

² Polyb. xviii. 22 (xviii. 39): καὶ τότε μὲν ἐχωρίσθησαν, πιστωσάμενοι περὶ τῶν ὄλων πρὸς ἀλλήλους, ἐφ' ᾧ Τίτον, εἰ μὴ συντελεῖται τὰ κατὰ τὰς διαλύσεις, ἀποδοῦναι Φιλίππῳ τὰ διακόσια τάλαντα, καὶ τοὺς ὀμήρουσ.

³ Polyb. xxi. 5; Liv. xxxvii. 7.—Cf. Liv. xxxiv. 35.

⁴ Liv. xxxvi. 27.—Cf. Polyb. xx. 9.

a certain period, or after the occurrence of certain events. In reference to the conditions of peace laid down by Titus Quinctius, 195 B.C., it was stipulated, amongst other provisions, that there should be a suspension of arms for six months between Nabis, king of Sparta, on the one part, and the Romans, king Eumenes, and the Rhodians, on the other; that Titus Quinctius and Nabis should immediately send envoys to Rome in order that the peace might be ratified by the authority of the senate; and that the armistice should begin on whatever day a written copy of these terms was delivered to Nabis.¹

The *sponsio*² was a different kind of arrangement concluded with the enemy. It was a personal covenant, entered into by the general on his own responsibility, to guarantee the subsequent confirmation by his home government of the conditions of peace to which he had consented at the cessation of hostilities. The derivation of the word indicates, according to some ancient grammarians, the spontaneous character of the transaction.³ In the case of the *foedus*⁴ the sanction of the senate and the Roman people was necessary *ab initio*. As Sallust says, the senate decreed—as was to be expected—that no treaty (that is, the formal *foedus*) could be made without its direction and that of the people,—“senatus uti par erat decrevit, suo atque populi iniussu nullum potuisse foedus fieri.”⁵ When Quintus Fabius and

The *sponsio*.

Difference between the *foedus* and the *sponsio*.

¹ Liv. xxxiv. 35: “...sex mensium indutiae ut essent Nabidi Romanisque et Eumeni regi et Rhodiis; legatos extemplo mitterent Romam T. Quinctius et Nabis, ut pax auctoritate senatus confirmaretur; ex qua die scriptae condiciones pacis editae Nabidi forent, ea dies ut indutiarum principium esset . . .”

² See vol. i. pp. 369 *seq.*

³ Cf. Festus, p. 329: “Spondere Verrius putat dictum, quod sponte sua, i.e., voluntate, promittatur; deinde oblitus inferiore capite sponsum et sponsam ex Graeco dictam ait, quod ii *σπονδὰς* interpositis rebus divinis faciunt.”

⁴ See vol. i. p. 391; and *supra*, pp. 43 *seq.*

⁵ *Iugurth.* 43.

four other ambassadors arrived in Africa to inquire whether Hannibal had laid siege to Saguntum by public authority, the Carthaginians replied that it was not a question of public or of private authority, but rather one of right or wrong—in which case their citizen if guilty of an offence, was subject to their own jurisdiction, and punishable by them alone. They further reminded the embassy that the Romans had repudiated all obligation in the case of the engagement concluded with them by the consul, Caius Lutatius, on the alleged ground that neither the senate nor the people had given sanction thereto; so that a fresh treaty was in consequence necessitated.¹ Again, when Philip entreated Quinctius not to prevent or delay negotiations for making peace, the latter emphasized that without the authority of the senate no agreement which he might make with the king could be valid.² Conformably to this principle, the Roman commanders usually inserted in their *sponsiones* the express proviso—if the senate and the Roman people gave their assent, ‘*si senatus populusque Romanus censuissent.*’³ The essential difference between the *foedus* and the *sponsio* is forcibly exemplified in the affair of the Caudine peace. In the conference between the Roman Consuls and C. Pontius, the leader of the Samnites, the former declared, when Pontius with the air of a conqueror spoke of a treaty (*foedus*), that a compact of this kind could not be concluded without the authority of the people, and the fetial formalities and solemn ceremonies; and that consequently the Caudine peace rested not on a treaty proper, but on an

¹ Liv. xxi. 18: “Vos enim, quod C. Lutatius consul primo nobiscum foedus fecit, quia neque auctoritate patrum, nec populi iussu ictum erat, negastis vos eo teneri: itaque aliud de integro foedus publico consilio ictum est.”

² Liv. xxxii. 36: “... nam neque sine auctoritate senatus ratum quicquam eorum fore, quae cum rege ipsi pepigissent...”—Cf. Liv. ix. 9: “iniussu populi nego quidquam sanciri posse, quod populum teneat.”

³ Liv. xxxvii. 45.

unauthorized *sponsio* (a personal covenant), which could not lay any responsibility on the State.¹

Hence, as a *sponsio* was entered into on a different basis from that of a *foedus*, it was held, according to strictly legal conceptions, that no obligations were thereby imposed on the State, but that the *sponsor* was alone bound by the transaction carried out on his own initiative,—“*sponsio . . . neminem praeter sponsorem obligat.*”² It followed, therefore, that in case of refusal by the government to ratify an undertaking of this kind, the other party had merely a personal action (*ex contractu*) against the covenantor. And it has already been pointed out³ that when this event occurred the *sponsor* was delivered to the enemy, as the only means of offering satisfaction. Examples of such annulment, and of subsequent surrender, have been mentioned above in the cases of the Caudine peace, the *sponsio* entered into with Corsica, the *sponsio Numantina*, and the two *sponsiones* with Jugurtha.⁴

Position of the State as to a *sponsio*.

To safeguard the maintenance of truces, *sponsiones* and other engagements, hostages were frequently given or exchanged. We have already seen⁵ that under certain circumstances they were to be restored in default of subsequent ratification by the government of the contracting individual; that in case of wilful violation of the ratified engagement, the injured State not infrequently wreaked a terrible vengeance on the foreign hostages in its possession; that on the commencement

Hostages in truces and *sponsiones*.

¹ Liv. ix. 5: “*Consules profecti ad Pontium in colloquium, quum de foedere victor agitaret, negarunt iniussu populi foedus fieri posse, nec sine fetalibus caerimoniaeque alia sollemni. itaque non, ut vulgo credunt Claudiusque etiam scribit, foedere pax Caudina, sed per sponsonem facta est.*”

² Liv. ix. 9. ³ See vol. i. pp. 369 *seq.*

⁴ Vol. i. pp. 370 *seq.* On the difference between the *foedus* and the *sponsio*, the following may be consulted: Grotius, ii. c. xv. §§ 2, 3, 16; Rubino, *Untersuch. über röm. Verf. u. Gesch.* pp. 275 *seq.*; Danz, *Der sacrale Schutz . . .*, pp. 116-126; Mommsen, *Röm. Staatsr.* vol. i. pp. 246-253; Fusinato, *Dei feziali . . .*, pp. 548 *seq.*

⁵ See vol. i. pp. 398 *seq.*

of hostilities between two countries, hostages of a third State given to either of the combatants did not enjoy the absolute immunity of diplomatic envoys and religious representatives, but were liable to be captured by the other and treated as ordinary prisoners of war, though they were more readily admitted to ransom; and that, apart from these circumstances, hostages were usually treated, both in Greece and Rome, with courtesy and marked consideration.

The erection
of trophies in
Greece.

After the conclusion of a truce, or more often, apart from this, on the retreat of the enemy (τρέπω, τροπή, turn about, rout, put to flight), a trophy,¹ τρόπαιον, was generally erected on the field of battle by the belligerent remaining on the field, and therefore considering itself the victor. The trophy was usually a wooden monument, and sometimes merely a trunk of a tree on which helmets, shields, or other arms taken from the enemy were suspended. In the case of naval victories it was put up on the nearest land, and was frequently ornamented with the beaks, or *acroteria* of vessels, and consecrated to Poseidon. It contained an inscription (ἐπίγραμμα) recording the names of the victorious and of the vanquished parties.² It was contrary to Hellenic custom to commemorate a victory by the erection of a stone or brass monument, or even to repair the wooden ones when fallen into decay,³—the underlying reason being the objection to perpetuating the memory of a conflict, so that the descendants of the conquered might not be denied due amnesty. When the Thebans raised a brass trophy to celebrate their victory over the Lacedaemonians, the latter laid a complaint before the Amphictyonic Council, on the

¹ Cf. Smith's *Dict. of Antiq.* s.v. *Tropaeum*; and Pauly's *Real-Encyclop.* s.v. *Tropaeum*.

² Eurip. *Phoen.* 583; Pausan. v. 27. 7.—Cf. Verg. *Aen.* iii. 288; Tacit. *Ann.* ii. 22.

³ Plut. *Quaest. Rom.* 37; Diodor. xiii. 24.

ground that this action was inconsistent with the established practice.¹ The various stone or brass monuments mentioned by Pausanias² were not trophies in the strict sense of the term, but simply records deposited in the public places and sanctuaries of the conquerors on their return home. The custom which was general amongst the Greek communities (it does not appear to have obtained amongst the Macedonians)³ seems to be mentioned for the first time in the case of a Spartan victory over Amyclae, an ancient town of Laconia, in the eighth century B.C., in memory of which a temple to Zeus Tropaios (Ζεὺς Τροπαῖος) was also built in the market-place of Sparta.⁴

If the retiring enemy acquiesced in the setting up of such trophies on the field of battle, his non-resistance implied an acknowledgment of defeat (τροπή); and, after this, when they were solemnly dedicated to Zeus, they were considered inviolable,—so that even the adversary was not allowed to remove them.⁵ When spoils were taken by both combatants, it was not unusual for each to put up trophies. Thus in 429 B.C., after an engagement between the Athenians and the Lacedaemonians both sides raised trophies.⁶ When the victory was not decisive, each side tried to prevent the other from erecting a monument, or constructed a second in another part of the field. In 432 B.C., after a conflict between Corinth and Corcyra, both parties

¹ Cic. *De invent.* ii. 23. 69.

² Cf. for example, Pausan. ii. 21. 8; v. 27. 7; viii. 10. 4.—See Plut. *Alcib.* 29.

³ Pausan. ix. 40. 4; Diodor. xvi. 4.

⁴ Pausan. iii. 2. 6; iii. 12. 9.

⁵ Cf. Dion Cass. xlii. 58.

⁶ Thuc. ii. 92: ἀναχωρήσαντες δὲ οἱ Ἀθηναῖοι τροπαῖον ἔστησαν, ὅθεν ἀναγόμενοι ἐκράτησαν. (The Athenians retired and raised a trophy in the place from which they had just sailed out to their victory.) . . . ἔστησαν δὲ καὶ οἱ Πελοποννήσιοι τροπαῖον ὡς νενικηκότες, τῆς τροπῆς, ἅς πρὸς τῇ γῇ ναῦς διέφθειραν. (The Peloponnesians also set up a trophy of the victory which they had gained over the ships destroyed by them near the shore.)

claimed the victory, *ἐκάτεροι νικᾶν ἤξιουν*, though on different grounds; and, accordingly, each set up a trophy.¹ In 412 B.C. when the Athenians, who had re-embarked after making a descent on Miletus and defeating the Lacedaemonians, returned three days later and raised a trophy, the Milesians pulled it down, on the ground that at the time of erecting it the Athenians had not really been masters of the field.²

In Rome.

With regard to the Romans, the erecting trophies on the field of battle was not practised by them in their earlier history, as Florus observes,—“cum hic mos inusitatus fuerit nostris.”³ The captured spoils were taken home, and served to decorate the public buildings, as well as the private houses of individuals. Later the Romans began to imitate the Greek proceeding; and in 121 B.C. we already find such monuments erected by Domitius Ahenobarbus and Fabius Maximus after their victory over the Allobroges (a people in Gallia Narbonensis). They built towers of white stone, upon which trophies were placed ornamented with the spoils taken from the defeated army.⁴ Similarly, Sulla put up a trophy in Greece;⁵ Pompey, on the Pyrenees after his successes in Spain;⁶ Caesar, after his victory over Pharnaces, king of Pontus;⁷ Drusus, on the defeat of the Germans;⁸ and Augustus erected one on the Alps.

¹ Thuc. i. 54.—Cf. i. 105, as to a disputed victory in the case of the Athenians and the Corinthians.—See also Xenoph. *Hellen.* v. 4. 65 and 66; vi. 4. 14; vii. 5. 26.

² Thuc. viii. 24: . . . καὶ τροπαῖον τρίτῃ ἡμέρᾳ ὕστερον διαπλεύσαντες ἔστησαν, ὃ οἱ Μιλήσιοι ὡς οὐ μετὰ κράτους τῆς γῆς σταθὲν ἀνείλον.

³ Florus, iii. 2.

⁴ Florus, iii. 2: “. . . ipsis quibus dimicaverant locis saxas erexere turres, et desuper exornata armis hostilibus tropaea fixerunt. . .” Cf. Strabo, iv. 1. 11; . . . καὶ ἔστησε τρόπαιον αὐτόθι λευκοῦ λίθου.

. . .

⁵ Plut. *De fort. Rom.* 4.

⁶ Strabo, iii. 4. 1; Plin. *Hist. nat.* iii. 18; Dion Cass. xli. 24.

⁷ Dion Cass. xlii. 48.

⁸ Dion Cass. li. 1; Florus, iv. 12.

In all the countries of antiquity, foreign individuals Espionage. caught in the act of spying the military organization of a State, even in time of peace, or reconnoitring the country, or trying to gain any information regarding the mobilization of troops, or making any observation whatever in time of war, were liable to the summary infliction of extreme measures. They were very often scourged immediately after their capture, and then put to death without any trial, or judicial examination of any kind. Sometimes they were first interrogated by the general, in order that he might acquire all information possible respecting the power and manœuvres of the enemy's military forces. Herodotus relates that three Greek spies having arrived in Sardis to obtain intelligence of the forces of Xerxes, were discovered, examined by the generals of the land-army, sentenced to death, and were led out to execution.¹ The king hearing of this sent some of his guards with orders to bring the spies to him, if they had not yet been put to death. They were accordingly brought before him, questioned as to their purpose, conducted round the troops, and sent away unharmed. He proceeded in this manner, not through feelings of mercy or magnanimity, but merely, as he himself alleged, in order that the enemy might be informed of his great might, and therefore surrender of their own accord before his expedition set out.²

In early Greece there was no tribunal for cases of military espionage (*κατασκοπή*). In the Homeric narratives, we find the application of summary methods. Dolon, the Trojan, who was sent in the night to spy out the Grecian camp, was taken by Odysseus and Diomedes, was compelled to give information as to the designs of his countrymen, and then put to death.³

¹ Herodot. vii. 146 : οἱ δὲ ἀπικόμενοί τε ἐς Σάρδις καὶ καταμαθόντες τὴν βασιλείου στρατιῆν, ὡς ἐπαίιστοι ἐγένοντο, βασανισθέντες ὑπὸ τῶν στρατηγῶν τοῦ πεζοῦ στρατοῦ, ἀπήγοντο ὡς ἀπολεύμενοι· καὶ τοῖσι μὲν κατεκέρκрито θάνατος.

² Herodot. vii. 147.

³ *Iliad*, x. 299 seq.

Later, as it is related by Pausanias, Aristocrates, the king of the Arcadians, who had joined the Messenians against the Spartans, in the second Messenian war, yielded to the bribes of Sparta, and despatched letters to the enemy, describing the plans of Aristomenes, the general of the Messenians. These letters were, however, intercepted; and the traitorous king was consequently stoned to death by the Arcadians (c. 668 B.C.).¹

Subsequently when judicial institutions were extended so as to take cognizance of treasonable practices, some discrimination was made between the case of the offending citizen and that of the alien. In the more fully developed Attic jurisprudence, the citizen accused of conveying to the enemy any intelligence whatever relating to military operations was liable to the general indictment for high treason,—*είσαγγελία*, or *προδοσίας γραφή*. He was *de facto* a *κατάσκοπος*, a spy, but *de iure* was designated a *προδότης*, a traitor, a betrayer of his country. In accordance with this distinction, Pausanias describes Aristocrates a *προδότης*;² and similarly the communication to the enemy of the plan and description of a town was dealt with as *προδοσία*.³ On the other hand, the alien accused of espionage was placed in the juridical position of a *κατάσκοπος*;⁴ but it does not clearly appear whether he was amenable to any regularly constituted prosecution relating thereto. Westermann, however, maintains that there was in such cases an indictment in *κατασκοπή* against foreign spies.⁵

When a spy was caught whilst the army was engaged in the field, summary proceedings, on the authority of

¹ Pausan. iv. 22. 5-7: . . . αὐτοί τε τὸν Ἀριστοκράτην ἔβαλλον οἱ Ἀρκάδες καὶ τοῖς Μεσσηνίοις διεκελεύοντο.

² Pausan. iv. 22. 3.

³ Hermog. *De invent.* i. 2.

⁴ Cf. M. H. E. Meier and G. F. Schömann, *Der attische Process* (neu bearbeitet von J. H. Lipsius), Berlin, 1883-7, p. 466; A. Westermann, in Pauly's *Real-Encyclop.* s.v. *κατάσκοπος*, vol. ii. (1842), p. 217.

⁵ *Loc. cit.*

the commander, invariably obtained. During the Sicilian expedition, an individual of servile origin having been caught in the act of communicating with the enemy by means of fire-signals was beaten to death by the order of Lamachus.¹ But when a foreign spy was detected in the city, and apart from all military manœuvres, there was undoubtedly some form of judicial procedure, the exact nature of which, however, is not clear. Thus an accusation of espionage was brought by Demosthenes against Anaxinus of Oreus, who was staying in Athens ostensibly for commercial purposes. He was twice tortured, but no confession was extracted from him, and he was afterwards sentenced to death.² Similarly, torture was inflicted on Antiphon who was caught in the Piræum, and who, it appears, had arranged with Philip to set fire to the Athenian arsenals. On the other hand, citizens accused of treasonable conveyance of intelligence to foreign States were, as a rule, exempt from torture; and their mode of execution was probably different also from that of alien culprits.

The practice of neutralizing certain persons, places, and objects, apart from temples and sanctuaries, and also the broader conception of neutrality obtained both in Greece and Rome. In international conventions we frequently find stipulations regarding the inviolability in war as in peace of certain localities, on the ground of their possessing a sacred character. Though their exemption from injury was the outcome originally of a *δεισιδαιμονία*, fear of the gods, that is, the consequence of a religious sanction, rather than of the commands of purely positive or conventional law, nevertheless the institution, such as it was, exercised salutary influences in promoting mitigations in warfare, fostering self-restraint in belligerent operations, and emphasizing generally the interests of peace. Besides, as has been

¹ Lysias, *c. Agor.* 64, 67: . . . παραφρυκτωρεύόμενος τοῖς πολεμίοις ληφθεὶς ὑπὸ Λαμάχου ἀπετυμπανίσθη.

² Demosth. *Pro Coron.* 137.—Cf. Aeschin. *c. Ctesiph.* 223-224.

insisted on in the earlier chapters, it is quite unjustifiable to obtrude peremptorily our modern point of view in judging ancient institutions, and estimating their intrinsic significance and practical applications; and it is scarcely relevant to point to this or that as appertaining more to religion than to jurisprudence, in our strict sense of the term. In the investigation and weighing of ancient practices the main point is, it is submitted, not so much the nature of the ultimate sanction and in what sphere it resided, but whether and to what extent regularization of procedure obtained, and how far it was protected and insisted upon. With the people of antiquity religion and law were twin-sisters that could not well be sundered; the commission of an offence against the one was usually met by penalties prescribed by the other, in addition to those laid down by itself. So that to offer any violence to a sacred place generally regarded as neutralized, was not only an offence against the presiding gods and rendered the transgressor liable to their unfailing retribution; it was also an infringement of the established 'law of nations'—whether taken universally, or in the more restricted sense of the law of the Hellenic communities—and, as such, was punishable by warlike measures on the part of offended States.

Neutralized
places.

Not only temples, religious functionaries, diplomatic legations, and other objects and persons of a like nature, but sometimes even entire cities and large territories, enjoyed protection. Thus Delphi was under the joint guardianship of the States which sent delegates to the Amphictyonic Council, though it cannot be said to have consistently remained a neutral community. Alalcomenae, an ancient town of Boeotia, possessed no fortifications; and on account of the respect paid to Athena, as the tutelary deity, it was protected from the hardships of war, and was never devastated.¹ The neutralized

¹ Cf. Strabo, ix. 2. 36: *καὶ γὰρ καὶ ἀπόρθητος αἰεὶ διετέλεσεν ἡ πόλις, οὔτε μεγάλη οὔσα, οὔτ' ἐν εὐερκεῖ χωρίῳ κειμένη, ἀλλ' ἐν πεδίῳ.*

character of the territory of Teos, in Asia Minor, was recognized—in this case on a distinctly positive basis—by the legislative provisions of twenty-five neighbouring towns.¹ In 193 B.C. Rome also recognized this act of neutralization, admitting the inviolable character of the city and its territory and its right of asylum, and, further, granted it immunity from all tribute.

The frequent and regularly recurring proclamations of religious truces (corresponding in a sense to the 'truce of god' of the Middle Ages) had a certain kinship to declarations of neutrality. In the event of solemnizing festivals and organizing the public games, not only was there a suspension of hostilities between the combatants, but enemy subjects and foreign pilgrims were enabled to traverse unmolested the very theatre of the war, and the territory of the belligerents.²

Neutrality and religious truces.

As to neutrality in a political and juridical sense, as apart from religious doctrines, clear manifestations of it are certainly discernible; though, admittedly, the conception was not by any means as clearly defined as it is in modern international law, nor did it necessarily imply with the same force and definiteness the bestowal of certain legal rights, and the imposition of correlative obligations. No doubt the observance or non-observance of neutrality at any particular juncture was—like most other kinds of international conduct—dictated by considerations of State interest or national policy, rather than by the promptings of the moral or juridical consciousness. Notwithstanding such motives (which are not entirely inoperative in the case of modern nations), it will be seen that the intrinsic conception of neutrality and its main principles were known to, and often put into practice by, the States of Hellas.

Neutrality in a political and legal sense.

¹ Cf. Michel, *Recueil d'inscrip. gr.* nos. 51-68; Egger, *Traités publics* . . . , pp. 157 *seq.*, for several inscriptions relating to this subject.

² See *supra*, pp. 284 *seq.*

Terms used to
express
neutrality.

The expressions, commonly used by Greek writers, such as, for example, *ἡσυχίαν ἄγειν*, *ἡσυχάζειν* (to keep quiet), *μηδέτερος*, *μηδ' ἕτερος*, *οὐδέτερος*, *οἱ μηδὲ μεθ' ἑτέρων* (to be of neither party), *οἱ διὰ μέσου*, *ἐκ τοῦ μέσου καθῆσθαι* (the party occupying an intermediate position), and the like, refer to the abstention from hostilities, but do not, of course, convey the wide and clear notions, positive as well as negative, of our modern word 'neutrality.' Herodotus says that after the death of Lycurgus, the Spartans flourished quickly, and were no longer content to live in peace, *καὶ δὴ σφιν οὐκέτι ἀπέχρα ἡσυχίην ἄγειν . . .*;¹—but later he uses the phrase in a sense approximating to the modern. Thus it is related, he says, that Xerxes, before he set out on his expedition against Greece, sent a herald to Argos to say that, according to tradition, the Persians were descendants of the Argives, and therefore it was not right that they should lead an army against their progenitors, nor that the latter should be opposed to the Persians, or assist others; and that, accordingly, Argos should refrain altogether from hostilities,—*ἀλλὰ παρ' ὑμῖν αὐτοῖσι ἡσυχίην ἔχοντας καθῆσθαι*.² In 413 B.C. on the overthrow of the Athenians in Sicily, many States which had before remained neutral, says Thucydides, found themselves no longer able to hold aloof from the war,—*οἱ μὲν μηδετέρων ὄντες ζύμμαχοι . . . οὐκ ἀποστατέον ἔτι τοῦ πολέμου . . .*³ In 429 B.C. the Plataeans protesting that the Lacedaemonians under Archidamus were violating the promise of independence made to them by Pausanias, Archidamus, in reply, offered them peace either if they joined the Lacedaemonian confederacy, or if they undertook to preserve neutrality.⁴ In the preceding year the Athenians retaliated on the Lacedaemonians on the ground, observes the historian, that the latter had unwarrantably treated as enemies and put to death all

¹ Herodot. i. 66.

² Herodot. vii. 150.

³ Thuc. viii. 2.

⁴ Thuc. ii. 72 : *εἰ δὲ μὴ, ἅπερ καὶ τὸ πρότερον ἤδη προῦκαλεσάμεθα, ἡσυχίαν ἄγετε, νεμόμενοι τὰ ὑμέτερα αὐτῶν, καὶ ἔστε μηδὲ μεθ' ἑτέρων, δέχεσθε δὲ ἀμφοτέρους φίλους, ἐπὶ πολέμῳ δὲ μηδ' ἑτέρους.*

they captured at sea, and appropriated their ships and cargo, whether they were allies of the Athenians or neutrals, τοὺς μηδὲ μεθ' ἑτέρων.¹

In addition to the foregoing examples (which could be readily multiplied), illustrating the use of Greek terminology to indicate the idea of neutrality,² two or three instances will now be considered to show further—in refutation of the carelessly reiterated assertions of various modern writers—that the Greek law of nations did not neglect this important subject. The constant practice of establishing alliances and confederations, the keen solicitude to prevent the inordinate aggrandizement of this or that State, and to maintain a balance of power militated considerably against the full development of the doctrine of neutrality. Thus, Hermocrates, exhorting the Camarinaeans to join the Syracusans against the Athenians, assured them that the pretext of the latter in coming to Sicily did not harmonize with their real intentions and their customary practice of asserting their predominance ;³ he urged them to effect a union of all free and independent peoples of Sicily, and not to be deluded by the cunning tales and tricks of the Athenians ;⁴ he urged them, moreover, not to make impartiality an excuse for what was cowardice,—δειλία δὲ ἴσως τὸ δίκαιον πρὸς τε ἡμᾶς καὶ πρὸς τοὺς ἐπιόντας θεραπεύσετε,⁵—for their professions of neutrality, under

Examples of the recognition of neutrality.

¹ Thuc. ii. 67.

² H. Taylor (*Treatise on international public law*, Chicago, 1901, p. 617) says : “A Greek orator had no words with which to say, ‘if you would really be neutrals,’” and takes exception to this expression used by Walker (*Science of international law*, p. 378) in reference to the appeal of the Corcyraeans (Thuc. i. 35). The above considerations, however, together with what follows will show, it is submitted, that the Greeks had words to convey the ideas of ‘neutrals,’ and of the preservation of ‘neutrality,’ though, of course (as has already been pointed out), not with our modern precision and comprehensiveness ; and that the terminology adopted by Walker, though it is not a literal translation of the Greek phrase, is perfectly justifiable, under the circumstances cited, to express the fundamental notion.

³ Thuc. vi. 76.

⁴ Thuc. vi. 77.

⁵ vi. 79.

the pretence of being in alliance with both belligerents, certainly involved danger to themselves, and injustice to their fellow Sicilians.¹

Principles of
neutrality
insisted on.

But certain principles of the doctrine of neutrality were clearly grasped, and not infrequently enforced. For example, it was held that it was the duty of a State standing in friendly relationships to two belligerents, on the one hand, to refrain from actively assisting either, and, on the other, not to allow one of the combatants, without similarly permitting its adversary, to come within its territory and make warlike preparations of any description. In 433 B.C. the Corcyraeans, in consequence of the extensive preparations of their enemy, the Corinthians, and fearing that they might be isolated, in view of the growing confederations of Athens and Lacedaemon respectively, despatched an embassy to Athens asking to be received as an ally. The envoys pointed out that they were compelled to renounce their indolent neutrality, which, though it may have been an error to preserve that attitude, was certainly not a crime;² that if the Athenians did not admit them into their alliance and help them against the enemy, they ought at least to be impartial and prevent the Corinthians from hiring mercenaries in their dominions, or they ought to help Corcyra to the same extent.³ In the reply of the Corinthian ambassadors, who came to oppose the application, the obligations of sincere neutrality, in contradistinction to the professions of a spurious policy, were further recognized by themselves, too; for they animadverted on the proceedings of the Corcyraeans, and alleged that they sheltered themselves under the specious name of neutrality;⁴ that, admitting (as the Corcyraeans held) that there was a provision in

¹ Thuc. vi. 80.

² Thuc. i. 32.

³ Thuc. i. 35: ἀλλ' ἢ κακείνων κωλίειν τοὺς ἐκ τῆς ὑμετέρας μισθοφόρους, ἢ καὶ ἡμῖν πέμπειν, καθ' ὃ τι ἂν πεισθῆτε, ὠφέλειαν, μάλιστα δὲ ἀπὸ τοῦ προφανοῦς δεξαμένου βοηθεῖν.

⁴ Thuc. i. 37: κὰν τούτῳ τὸ εἰπρεπὲς ἄσπονδον οὐχ ἵνα μὴ ξιναδικήσωσιν ἑτέροις προβέβληνται. . . .

the treaty between Athens and Lacedaemon allowing unenrolled cities to join either league, this clause, however, did not apply to those who had in view the injury of others; ¹ and, finally, that in common justice the Athenians should stand aloof from both contending parties, since to receive the enemy of Corinth into their alliance would be equivalent to a declaration of war on Corinth herself.² Similarly, Archidamus, the commander of the Lacedaemonians and their allies (429 B.C.), enjoined on the Plataeans the duty of neutrality, if they did not care to join the confederacy.³ Again, in 427 B.C. the Plataean prisoners were sentenced to death by the Lacedaemonian judges, because (as the latter held) they had refused Sparta's proposal to remain neutral, ἡσυχάζειν.⁴ In connection with the Athenian expedition to Melos, 416 B.C., the Melians, says Thucydides, though colonists of the Lacedaemonians, yet remained neutral in the conflict between the latter and Athens,—ἀλλὰ τὸ μὲν πρῶτον οὐδετέρων ὄντες ἡσυχάζον;⁵ and when the Athenians tried to coerce them into an alliance by ravaging their territory, they were driven into open hostilities.⁶ In the controversy that followed, the Melian representatives pointed out that the neutrality of their countrymen would be really to the advantage of Athens, for coercion would convert all neutral States into open enemies.⁷ Once more, in 415 B.C., in the course of the Peloponnesian war, the Athenians, in view of their designs on Sicily, mustered their armament at Corcyra, and sailing across the Ionian Sea reached the Italian coast, but found the various cities there determined to preserve neutrality. The Italian cities, observes Thucydides, refused them admission within their walls, and even denied them provisions, though water and a safe anchorage were,

¹ Thuc. i. 40.

² Thuc. i. 40: οὐ γὰρ τοῖσδε μόνον ἐπίκουροι ἂν γένοισθε, ἀλλὰ καὶ ἡμῖν ἀντὶ ἐνοσπόνδων πολέμιοι. ἀνάγκη γὰρ, εἰ ἴτε μετ' αὐτῶν, καὶ ἀμύνεσθαι μὴ ἄνευ ὑμῶν τούτους.

³ Thuc. ii. 72.

⁴ Thuc. iii. 68.

⁵ Thuc. v. 84.

⁶ *Ibid.*

⁷ Thuc. v. 94, 98.

for the most part, allowed. Afterwards the fleet reunited at Rhegium, but the forces were not received within the city, and were therefore compelled to encamp outside the walls, at the temple of Artemis. Subsequently in a conference with the Rhegians, the latter, in reply to the request for assistance, declared they would be neutral, and would act only in accordance with the decision of the Italian Greeks.¹ And the same principle of neutrality was emphasized in a special provision of the alliance between Athens and the Argive confederacy, 420 B.C. This was to the effect that the confederates should not permit armed men to pass through their territory, or to pass by sea, with hostile intent, unless all the parties to the treaty consented.²

Traversing
neutral
territory.

In this connection Grotius, in the portion of his third book dealing with the position of neutrals in time of war,³ cites several instances indicating the observance of this principle. He remarks that the Greek and Roman generals frequently followed the example of Moses who, when compelled to lead his people through the land of the Edomites,⁴ took the high road, avoiding the fields and vineyards, and paying for what he received during the journey. He also refers to Clearchus, who conducted a Greek army through Persian territory 401 B.C., and engaged to abstain from doing any damage, and to pay for all provisions.⁵ Similarly, Dercyllidas,

¹ Thuc. vi. 44 : οἱ δὲ οὐδὲ μεθ' ἑτέρων ἔφασαν, ἔσεσθαι, ἀλλ' ὁ τι ἂν καὶ τοῖς ἄλλοις Ἰταλιώταις ξυνδοκῆ, τοῦτο ποιήσειν.

² Thuc. v. 47 : ὄπλα δὲ μὴ ἔᾶν ἔχοντας διείναι ἐπὶ πολέμῳ διὰ τῆς γῆς τῆς σφετέρως αὐτῶν καὶ τῶν ξυμμάχων ὧν ἂν ἄρχωσιν ἕκαστοι, μηδὲ κατὰ θάλασσαν, ἣν μὴ ψηφισαμένων τῶν πόλεων ἀπασῶν τὴν δίοδον εἶναι. . . .

³ III. xvii. 2, "de his qui in bello medii sunt."

⁴ Num. xx. 17.

⁵ Grotius, *loc. cit.* § 1 : "Moses cum summa ipsum et populum necessitas urgeret transeundi per agros Idumaeorum, primum ait transiturum se via regia, neque deflexurum in arva aut vineta ; si vel aqua ipsorum opus haberet, persoluturum se eius pretium. Idem praestiterunt laudati et Graecorum et Romanorum duces. Apud Xenophontem Graeci qui cum Clearcho, Persis pollicentur nullo se damno iter facturos ; et si venales commeatus praebarent, neque esculenta se, neque poculenta cuiquam erepturos."

the Spartan general, on his way to Aeolis, 399 B.C., led his forces through neutral territories, and refrained from all injury;¹ as was also the case with Perseus of Macedon in Phthiotis, Achaea, and Thessalia;² Agis in the Peloponnese;³ Sulla in Calabria and Apulia;⁴ Pompey in Asia;⁵ Domitian in the country of the Ubii;⁶ Severus in his Parthian expedition;⁷ and so on with others.⁸

M. Kleen, commenting on examples of this character, says they prove little or nothing as regards neutrality in the strictly juridical sense,—“ces exemples prouvent peu ou rien quant à la neutralité dans le sens strictement juridique.”⁹ That such restraint and consideration for the rights of others were not simply the outcome of an insistence on, and submission to, a purely juridical system has already been shown. But it is going too far to assert that conduct of this kind had *no reference whatever* to the conception of obligation, in

¹ Xenoph. *Hellen.* iii. 1. 8: παρήγαγε τὸ στράτευμα διὰ τῆς φιλίας χάρας, μηδὲν βλάβας τοὺς συμμάχους.

² Liv. xli. 27: “per Phthiotidem, Achaeam, Thessaliamque sine damno iniuriaque agrorum per quos iter fecit, in regnum rediit.”

³ Plut. *Agis*,: . . . ἀβλαβῶς καὶ πρῶως καὶ μονοноῦ καὶ ἀφορητὶ διαπορευόμενοι τὴν Πελοπόννησον. . . .

⁴ Velleius, ii. 25: “putares venisse in Italiam, non belli vindicem, sed pacis auctorem; tanta cum quiete exercitum per Calabriam Apuliamque cum singulari cura frugum, agrorum, urbium, hominum, perduxit in Campaniam.”

⁵ Cic. *Pro leg. Manil.* 13: “cuius legiones sic in Asiam pervenerunt, ut non modo manus tanti exercitus, sed nec vestigium quidem cuiquam pacato nocuisse dicatur.”

⁶ Frontinus, ii. 11: “cum in finibus Ubiorum castella poneret, pro fructibus eorum locorum, quae vallo comprehendebat, pretium solvi iussit, atque ea iustitiae fama omnium fidem sibi adstrinxit.”

⁷ Lampridius, 50: “tanta disciplina, tanta reverentia sui egit, ut non milites, sed senatores transire dicerentur; quacumque iter milites faciebant, tribuni accincti, centuriones verecundi, milites amabiles erant; ipsum vero ob haec tot et tanta bona provinciales ut Deum suscipiebant.”

⁸ Cf. Grotius, *loc. cit.* § 2, from whom the foregoing references are taken.

⁹ R. Kleen, *Lois et usages de la neutralité*, 2 vols. (Paris, 1898, 1900), vol. i. p. 4, footnote.

a legal as well as in a moral sense,—for then, as now, wilful infringements of these duties would, in default of due restitution, call forth on the part of the injured or offended nation a declaration of open hostilities, as the final remedy of the law, ‘ultimum remedium iuris.’ Further, when the same writer, emphasizing that there can be no question of neutrality in the absence of provisions for the regularization of warfare, holds that, in view of this necessary relationship, there was not therefore anything of the true nature of neutrality amongst the ancients,¹ he is simply begging the question; for the substance of this and the previous chapter, together with the general exposition of the subject here dealt with, will show conclusively, it is hoped, that there *was*, in many respects, a ‘réglementation de la guerre.’

Various rights
and duties
of neutrals
recognized
in Greece.

Thus it was considered a violation of the rights of neutral States to interfere with their peaceful commercial intercourse, either by sea or land, or to take forcible possession of their goods whilst passing through their dominions;² it was held a breach of neutrality on the part of third States not in alliance with the belligerents to assist either by sending auxiliaries or permitting the enrolment of forces, to betray their manœuvres, to allow armed troops of the combatants to pass over their territory, to permit the planning of naval operations in their territorial waters, to shelter or to aid the fleet in their ports and harbours beyond what was reasonably necessary for the effecting of a safe departure. And it has already been pointed out

¹ Kleen, *op. cit.* vol. i. p. 2: “Or, le principe de la neutralité présupposant la réglementation de la guerre, il ne pouvait alors en être question. Comment les principes d’impartialité, d’abstention et de respect auraient-ils pu être imposés et appliqués par les belligérants et contre eux, lorsque tout ce qui touchait à l’état de guerre n’était soumis à aucune loi?”

² Cf. D. A. Azuni, *Droit maritime de l’Europe* (Paris, 1805), pp. 86-7: “Les anciens mettaient à un si haut prix le mérite de la neutralité à laquelle on s’engageait envers eux, qu’ils la regardaient comme une garantie ou sauve-garde, pour ainsi dire sacrée.”

that the wilful denial of neutrality was regarded as a justifiable cause of war, as, for example, when the Agrigentines were besieged by the Carthaginians for refusing to remain neutral.¹

With regard to Rome, it may be at once said that her unswerving policy of expansion, of imperial development, of incorporation of other communities was of necessity antagonistic to the recognition of neutrality, either on the part of herself, or on that of other States. Her customary attitude (more particularly in the later portion of her history) was well represented by the doctrine, often formulated in explicit terms, that those who were not for her were against her, that those who were not her allies were therefore her enemies, and no intermediate position was admitted,—“*media . . . nulla via est . . . Romanos aut socios aut hostes habeatis oportet.*”² The practice of the Romans conformably to this doctrine was forcibly pointed out by Aristaenus in a speech delivered before the representatives of the Achaean league, 198 B.C.

Roman views
as to neutrality.

The alliances of Rome, commenced in the first instance on a substantially, or, it may be, apparently, equal basis, were step by step so modified as to transform what were original allies into dependents and subjects. Some of the phases of this transformation are indicated in the *Digest*³ and elsewhere by the use of such terms as *liberi*, *fundi*,⁴ *amici*,⁵ *socii*,⁶ *foederati*.⁷ These changes were not effected all at once, nor in a short period of time; for, as has been shown in the earlier chapters, Rome recognized, during the greater part of her history, the autonomy and independence and the juridical personality of regularly organized States.⁸

¹ Diodor. xiii. 85.—See *supra*, p. 186, in connection with the causes of war, and *infra*, chap. xxviii., as to neutral rights at sea.

² Liv. xxxii. 21.

³ Cf. *Dig.* xlix. 15. 7. 1.

⁴ Cf. Cic. *Pro Balbo*, 8, 19.

⁵ See vol. i. pp. 216, 223, 227.

⁶ See vol. i. pp. 227, 256, 380.

⁷ See *supra*, pp. 46 *seq.*

⁸ See vol. i. pp. 107, 110 *seq.*

Various rights
and obliga-
tions of
neutral States
recognized
by Rome.

From time to time there appear more or less rudimentary notions of neutrality, which appertain mainly to the duty of abstaining from hostile conduct under certain circumstances. Of this obligation numerous examples (as mentioned above) are found in regard to the peaceful march of Roman armies through the territory of States with which Rome was not at war. Similarly, when the Roman and the Carthaginian vessels under Scipio and Hasdrubal respectively chanced to meet (206 B.C.) in a harbour situated in the territory of Syphax, king of the Massaesylians, they refrained from offering molestation of any kind;—nothing more, remarks Livy, than some confusion among the sailors and soldiers took place, now that they found themselves in the king's harbour, "*nec ultra tumultum ciere quisquam in regio portu audebat.*"¹ Assistance in any form rendered by a State to an enemy of Rome was regarded by the latter as a deliberate act of hostility. Thus, at the close of the second Punic war, 201 B.C., when the military operations of Scipio against Carthage were triumphant, a Macedonian embassy arrived in Rome, and requested the liberation of a number of their countrymen who had served as mercenaries under Hannibal, and had been taken prisoners by the Romans. The claim advanced by the ambassadors on this occasion was somewhat analogous to the doctrine of 'limited assistance' which obtained in the seventeenth and eighteenth centuries. But Rome at once rejected the demand, and pointed out to the representatives of Philip that friendly relationships between the two States were broken, not only by Macedonian hostilities against Roman allies, but by the fact of their sending auxiliaries and money to a Roman enemy,—"*dupliciter ab eo foedus violatum, et quod sociis populi Romani iniurias fecerit ac bello armisque lacesiverit, et quod hostes auxiliis et pecunia iuverit.*"²

¹ Liv. xxviii. 17.

² Liv. xxx. 42.

The distinction between combatants and non-combatants, as referred to by Cicero, points rather to the Roman regard for the regular composition of the army, than to the idea of any legal obligation towards the enemy. A son of Cato served as a recruit under Popilius, a provincial governor, and after the legion was disbanded he still remained with the enemy 'from a love of fighting'; whereupon Cato wrote to Popilius asking him to bind his son by a second military oath, if he was retained on active service, because through avoidance of the former oath, he had no right to fight against the enemy.¹ It is hardly to be doubted that the underlying duty mentioned here simply referred to a provision of Roman public law regarding the due and proper enrolment of soldiers.

Similarly, the regulation of contraband of war was more a matter of municipal law than of the law of nations; and, this being so, offences of this class were constituted treasonable practices on the part of subjects, —for they could scarcely be regarded as breaches of obligation on the part of neutral States. From the earliest times, both in Greece and in Rome, the furnishing of arms or other appliances of war to the enemy was punished by death or exile. Sometimes, specific provisions were inserted in international conventions excepting certain things from being classed as contraband, and therefore prohibiting their seizure; at other times, a like principle was enforced by private decrees of governments. Thus, by an Athenian decree of 426 B.C. relating to Methone, the Methonians were allowed to import corn from Byzantium, and the ship chartered by them for that purpose was not to be

¹ Cic. *De offic.* i. 11: "Popilius imperator tenebat provinciam, in cuius exercitu Catonis filius tiro militabat. Cum autem Popilio videretur unam dimittere legionem, Catonis quoque filium, qui in eadem legione militabat, dimisit. Sed cum amore pugnandi in exercitu remansisset, Cato ad Popilium scripsit, ut, si eum pateretur in exercitu remanere, secundo eum obligaret [militiae] sacramento: quia, priore amisso iure, cum hostibus pugnare non poterat."

considered contraband,—ἀξήμιος [δὲ | ἔσ]τω καὶ ἡ ναῦς ἡ ἐχσάγουσα.¹

Neutrality
proper a
modern
development.

Of neutrality in the strictly modern acceptation, the Romans knew very little, and their terminology—including such expressions as *amici*, *socii*, *pacati*, *medii* (the nearest word to denote the notion proper, and used for ‘neutrals’ by writers like Grotius), and other like words of a more or less vague and indeterminate character—does not convey the idea of distinct rights on the one hand, and clearly accepted obligations on the other. The development of the true conception, and the systematic practice, of neutrality were left to more modern times, when nationalities were more clearly differentiated, their autonomy and independence as States firmly established, their territorial sovereignty affirmed and recognized, and when—in view of the unprecedented increase of commercial intercourse—the interests of peace asserted their predominance over the precarious vicissitudes of war.

¹ From an inscription on a marble slab found in the theatre of Dionysus; Hicks, 60; Michel, 74; *Corp. inscrip. Att.* i. 40.

CHAPTER XXVI

THE FETIALS: *IUS FETIALE*, AND ITS RELATION TO THE ROMAN LAW OF WAR AND PEACE

THE *ius fetiale*¹ embraced various matters relating to the law of war and peace, such as, for example, the proclamation of war, the conclusion of peace, the judicial declaration as to the adequacy and justice of the alleged causes of war, the establishment of international conventions, the law of legation, the extradition of those who committed offences against the law of nations, and other allied subjects. As these branches of international law as understood and practised by Rome have already been dealt with in the preceding chapters, it will be well here simply to consider how the fetial magistrates were personally connected with those questions, the nature of their privileges, powers, and functions, the organization of their college, and the different proceedings and formalities they took part in as regular preliminaries to war, from the formulation of the complaint of Rome as to an offence committed by a foreign State, and the demand for satisfaction therefor to the final declaration of hostilities.

Matters
included in
the *ius fetiale*.

¹On the subjects dealt with in this chapter, see the following: A. Weiss, *Le droit fétial et les fétiaux à Rome* (in *La France Judiciaire*, Paris, 1882-3, pp. 441-452, pp. 465-496); G. Fusinato, *Dei feziali e del diritto feziale* (in *Atti della Reale Accademia dei Lincei*, Roma, serie iii. vol. xiii., 1883-4, pp. 451-610); M. A. Carnazza, *La istituzione dei feziali in rapporto al diritto pubblico romano* (Catania, 1886); F. C. Conradi, *De fezialibus et jure feziali populi Romani* (in *Scripta minora*, vol. i., Halis, 1823, pp. 259-384).

Definition of
fetials.

Nonius Marcellus, a Latin grammarian of the fourth century A.D., in his definition of fetials (which, however, is not sufficiently comprehensive) emphasizes their sacred duties in their capacity of ambassadors, when they were despatched to demand restitution for wilful injuries inflicted on the Roman people, and also as heralds proper when, failing due reparation, they were sent again to utter a solemn declaration of war. "Faetiales apud veteres Romanos erant qui sancto legatorum officio ab his qui adversum populum Romanum vi aut rapinis aut iniuriis hostili mente comoverant, pignera facto foedere iure repetebant; nec bella indicebantur, quae tamen pia vocabant priusquam quid fuisset faetialibus denuntiatum."¹ Their close relationship to the establishment of peace and treaties is shown by the Greek appellations usually adopted to translate the word *fetials*,—for example, εἰρηνοδίκαι² (declarers of peace), εἰρηνοφύλακες³ (guardians of peace), εἰρηνοποιόι⁴ (makers of peace), σπονδοφόροι⁵ (bearers of treaty of peace), and the like.

The name and
its spelling.

The common modern spelling of the word, namely *fecialis*, or *foecialis*, does not appear to be accurate. The Romans of the classical epoch undoubtedly wrote it *fetialis*, as several extant inscriptions indicate. Similarly the Greeks transliterated the word thus—φητιάλεις, or φετιάλεις, φετιάλιοι, φητιάλιοι, or φητιάλιοι,⁶ as also φητιαλείς,⁷ and again φητιάλιος⁸ in the singular. The origin of the term is a controverted question. There is no unanimity amongst the old grammarians, who suggest various conflicting etymologies, whilst modern writers are not behindhand in advancing ingenious derivations. Thus, Festus attributes the origin of the word *fetialis* to the verb *ferire*, as applied in the

¹ Nonius Marcellus, *De compendiosa doctrina*, 529 (ed. W. M. Lindsay, p. 850, ll. 1 seq.).

² Dion. Hal. ii. 72.

³ Plut. *Numa*, 12.

⁴ Plut. *Quaest. Rom.* 62.

⁵ Dion. Hal. i. 21.

⁶ Cf. Dion. Hal. ii. 72; Plut. *Camill.* 18; Plut. *Numa*, 12.

⁷ Plut. *Numa*, 12.

⁸ Dion Cass. l. 4.

expression 'ferire foedus,' to conclude a treaty, on account of the necessary connection of the fetials with such proceedings: "Fetiales a feriendo dicti, apud hos enim belli pacisque faciendae ius est."¹ Varro derives it from *fides*, on the ground of their guardianship of the public 'good faith,' as manifested in the relationships between States: "Fetiales . . . fidei publicae inter populos praeerant nam per hos fiebat ut iustum conciperetur bellum, et inde desitum ut foedere fides pacis constitueretur."² Servius holds that the word comes from *foedus*,³ which, it has been maintained, is a cognate form of *fides*. Again, Vossius⁴ suggests *fari, fatu*, to speak, on the ground of the fetials acting as the 'spokesmen' of the Roman people in their important transactions with foreign communities. Possibly this suggestion is due to the fact that the word *oratores* is sometimes used by Roman writers to designate these functionaries—though more especially the similar representatives of other countries; as Varro says: "Fetiales legatos . . . mittebant, quos oratores vocabant."⁵ Further, others derive the name from the verb *facere, feci*, to make (thus suggesting the other spelling *fecialis*), because the fetial envoys *made* peace and war. Finally, M. Weiss⁶ inclines to the opinion that they owed their name (*fetiales, feriales*) to the worship of Jupiter *Feretrius*, the god of peace and of treaties. Perhaps the most tenable conjecture is that which connects the word *fetial* with *foedus*, and thence with *fides*;⁷ for, as M. Fusinato insists, *foedus* and *fetial* embody conceptions which are fundamentally allied and inseparable, ". . . *foedus e feziali sono due concetti che nella loro purezza non si possono, a quanto io credo, separatamente con-*

¹ Festus, *De verb. signif.* s.v. *Fetialis*. ² Varro, *De ling. Lat.* v. 86.

³ Servius, *Ad Aeneid.* i. 62; iv. 242; viii. 641; x. 14.

⁴ *Etymologicum linguae Latinae* (Amstelodami, 1662).

⁵ Varro, *De vita pop. Rom.* ii. 13.—Cf. Cic. *De leg.* ii. 9.

⁶ *Le droit fétial, loc. cit.* pp. 442-443.

⁷ On *fides*, see vol. i. pp. 120, 389, 391, 393; and *supra*, p. 33.

cepire.”¹ Mommsen, however, simply observes that the word is of uncertain derivation, “ungewisser Ableitung.”² Whether or not one or other of the above suggested derivations is the correct one, they, at least, all indicate the establishment by the Romans of an institution for regularizing the proceedings relative to the most important questions of the law of peace and war.

Foundation of
the college of
fetials.

Institutions analogous to the Roman college of fetials existed from the earliest times amongst the Italic communities generally. Thus Livy mentions a *pater patratus* of the Albans, in reference to a compact entered into between them and Rome ;³ and after the defeat of the Samnites, fetial envoys of the latter were despatched to Rome to effect the surrender of the dead body of Brutulus Papius, who had been considered the author of the war (320 B.C.)—“*fetiales Romam, ut censuerunt, missi et corpus Brutuli exanime.*”⁴ Similarly the Ardeates are reported to have had an institution of a like character.⁵

The original foundation of the *ius fetiale* has been attributed by Valerius Maximus to Fertor Resius,—“*ab Aequiculis septimum modium, primum regem eorum, et Fertorem Resium qui ius fetiale constituit*” ;⁶ and confirmation of this statement is found in other quarters.⁷ Dionysius ascribes the creation of the fetials to Numa Pompilius, the second king,⁸ to whom is also attributed the establishment of the pontiffs, the flamens, the augurs, and the vestal virgins. Livy speaks in one place⁹ as though the fetial college was due to Ancus Marcius, the fourth king, though in a previous passage¹⁰ its earlier existence is implied. Cicero, again, points out that part of the fetial law goes back to

¹ *Dei feziali . . . , loc. cit.* p. 547.

² *Röm. Gesch.* vol. i. p. 169. ³ Liv. i. 24.

⁴ Liv. viii. 39.—Cf. ix. 1. ⁵ Dion. Hal. ii. 72.

⁶ Val. Max. (ed. C. Kempf, Lipsiae, 1888), p. 588, ll. 6-8.

⁷ e.g. Aurelius Victor, *De viris illust.* 5.

⁸ Dion. Hal. ii. 72.

⁹ Liv. i. 32.

¹⁰ Liv. i. 24.

Tullius Hostilius, the third king of Rome, who promulgated a law regulating warfare. This was to the effect that in order to be just and valid, the commencement of hostilities must be preceded by a solemn proclamation in conformity with the religious ceremonies of the fetial priests, and that in default of such public declaration, every war should be deemed 'unjust' and impious,—“sanxit fetiali religione, ut omne bellum, quod denunciatum indictumque non esset, id iniustum esse atque impium iudicaretur.”¹

It is not improbable that the Roman fetial law was embodied in the early *ius sacrum*, which was gradually borrowed by the Romans from the ancient communities in Italy, and more fully and systematically organized by them. There appear no valid reasons for accepting the assertion of Mommsen that, though colleges like the augurs and the pontifices occur amongst all communities organized on the Latin scheme, as very ancient heirlooms of the Latin stock, “als ältestes latinisches Stammgut,” the fetials, amongst other institutions, originated in and remained confined to Rome,—“in Rom entstanden und darum auch auf Rom beschränkt geblieben sind.”² The Romans did not hesitate to transplant to their own country foreign gods, and to introduce from abroad modes and systems of worship; as in later times they were ever ready to enlarge their jurisprudence and their literature by adopting rules, ideas, and forms from other nations. The above-mentioned *ius sacrum* no doubt prescribed, amongst other matters, solemn formalities that were to be used for the settlement of disputes between private individuals, or between entire cities. According to the old law of the Quirites, the ultimate sanction lay in the potentiality of citizens to have recourse to force for the purpose of obtaining satisfaction in their alleged claims. We find traces of this, for example, in the old statute-process, the *legis actiones* which, however, are not earlier

The *ius fetiale*
and the *ius*
sacrum.

¹ Cic. *De rep.* ii. 17.—Cf. ii. 31. ² *Röm. Gesch.* vol. i. p. 168, note.

(as some writers have asserted without advancing cogent reasons) than the formal proceedings relating to the declaration of war; thus, in the *sacramentum*,¹ a stake was employed as a symbol of force, and the *manuum conseritio* simulated a contest between the two contending parties, in that they laid hands at the same time upon the thing in dispute, each claiming it as his own. The expression 'manum conserere' (to engage in close combat, that is, hand to hand) is obviously related to military operations, for the litigants in question are said to have crossed two rods, "*festucas inter se commisisse*," before the praetor, as though engaging in combat, and the party losing his claim is said to have surrendered his rod to his victorious opponent. Hence *vindicia* (the laying claim by the disputants) was sometimes described as "*vis civilis et festucaria*."²

Similar
institutions
in other
countries.

In many other countries outside Italy there were somewhat similar sacerdotal colleges, to which was entrusted the preservation of various traditional rules and practices, and which exercised a beneficial influence in the humanizing and regularizing of warlike proceedings. Thus in ancient Gaul the Druids often officiated as arbitrators or mediators between belligerents (as Grotius observes, following Strabo), and often separated them when they were about to join battle,—"*inter bellantes erant arbitri et saepe iam acie congressuros diremerunt*."³ Likewise in Iberia religious functionaries, by virtue of their sacred authority, intervened between combatants, and not infrequently succeeded in

¹ See vol. i. p. 270.

² Cf. Aul. Gell. xx. 10. 8; Festus, *s.v.* *vindicia*: "*correptio manus in re atque in loco praesenti apud praetorem ex duodecim tabulis fiebat*."—Another view is that *vindicia* was a rod ('*virgula*,' or '*festuca*') broken by the two claimants ('*litigantes*,' or '*disceptantes*') in their feigned struggle before the praetor, so that one of them might say he had been deprived of possession by the other, and consequently claim restoration by a praetorian decree.

³ *De iure belli et pacis, Proleg.* 36.—Cf. Strabo, iv. 4. 4: "... ὥστε καὶ πολέμους διήτων πρότερον καὶ παρατάττεσθαι μέλλοντας ἔπανον. . . .

putting an end to hostilities.¹ So in ancient Greece, as the Homeric poems inform us, and, indeed, in later times too, the κήρυκες, heralds, not only summoned the assemblies,² and preserved good order in them,³ and were charged with the various arrangements at festivals and sacrifices,⁴ but they also separated combatants,⁵ and were employed to convey messages between belligerents,⁶—as their office was sacred and their persons inviolable through their enjoying the immediate protection of Zeus,—Διὸς ἄγγελοι ἠδὲ καὶ ἀνδρῶν⁷ (the messengers both of Zeus and of men).

The college of fetials, the *collegium fetialium*⁸ (described by Dionysius as σύστημα τῶν φητιαλίων⁹), consisted of twenty members,¹⁰ who were at first selected from among the Roman patricians exclusively;¹¹ but in process of time plebeians were very likely admitted. The Ogulnian law of 300 B.C. had rendered possible the admission of plebeians to two of the great sacerdotal corporations ('amplissima collegia'), namely the college of augurs (in which five out of the nine members could be plebeians), and the college of pontiffs (four out of the eight); and there is no reason for supposing that after this precedent was erected they continued to be debarred from the college of fetials.¹²

How the college was organized.

¹ Strabo, iv. 4. 3.

² *Iliad*, ii. 50, 97; ix. 10; *Odyss.* ii. 6; etc.

³ *Iliad*, ii. 280; xviii. 503.

⁴ *Iliad*, iii. 245 *seq.*; *Odyss.* xx. 276.

⁵ *Iliad*, vii. 274 *seq.*

⁶ *Iliad*, ix. 170; xxiv. 149, 178; *Odyss.* x. 59, 102.

⁷ *Iliad*, i. 334.—Cf. *ibid.* iv. 192; viii. 517.

⁸ Liv. xxxvi. 3.

⁹ Dion. Hal. ii. 72.

¹⁰ Varro, *De vita rom. pop.* iii. 8: "Fetiales viginti, qui de his rebus cognoscere, iudicare at statuere, constituerunt."

¹¹ Dion. Hal. ii. 72: εἰς δ' ἐκ τῶν ἀρίστων οἴκων ἄνδρες ἐπίλεκτοι. . .

¹² Cf. Fusinato, *Dei feziali*, *loc. cit.* p. 185: "...che il collegio fosse patrizio in origine; che poi, aperti ai plebei con la legge Ogulnia i due principali collegi sacerdotali, a poco a poco, senza che si possa nè importi punto di fissarne il momento, i plebei, quasi inavvedutamente e naturalmente fossero ammessi a formar parte anche del collegio feziale."

Cooptation.

When a vacancy occurred it was filled, as in the case of the other colleges, by cooptation,¹—a procedure which, it would appear, comprised three steps.² First, there was the *nominatio*, the preliminary introduction of the candidates by members of the college, who certified by oath that the said candidates were fit and proper persons to join the body, ‘*iudicium dignitatis facere*.’³ This was followed by the *cooptatio* proper, that is, the actual choice of one of the competing candidates.⁴ Finally came the *inauguratio*, the solemn consecration of the elected individual, and his installation into the new office.⁵ These formalities are summarized by Cicero, in reference to the college of augurs, when he deploras the loss of Hortensius, his rival and friend; it was he, Cicero says, who obtained for him entrance to the college by declaring him, on oath, worthy of admission, and who had also consecrated him.⁶ Under the Empire, when the importance of the fetials had declined, and so many modifications in ancient institutions had been effected, this right of cooptation was exercised under the supervision and with the sanction of the emperor.

¹ Cf. Cic. *Ad Fam.* iii. iv. “. . . Amplissimi sacerdotii collegium, in quo non modo amicitiam violari apud maiores nostros fas non erat, sed ne cooptari quidem sacerdotem licebat, qui cuiquam ex collegio esset inimicus.”—Cf. Liv. xl. 42; xlv. 44 (as to the election of the augurs): “augur eo anno mortuus est C. Claudius; in eius locum augures legerunt T. Quinctium Flaminius.”—Dion. Hal. ii. 73, says, in reference to the pontifices, that when any one of them died, another was appointed in his place, not by the people, but by the members of the college, from amongst those considered to be the best qualified of their fellow-citizens.—Cf. also Aul. Gell. i. 12.

² See Willems, *Dr. pub. rom.* p. 293; and cf. generally A. Gemoll, *De cooptatione sacerdotum Romanorum* (Berolini, 1870).

³ Cic. *Brut.* i. 1.

⁴ Cic. *Brut.* i. 1.—Cf. Liv. iii. 32; Sueton. *Ner.* 2.

⁵ Cic. *Brut.* i. 1; Dion. Hal. ii. 73; Liv. xl. 42.

⁶ Cic. *Brut.* i. 1: “. . . et cooptatum me ab eo in collegium recordabar, in quo iuratus iudicium dignitatis meae fecerat, et inauguratum ab eodem.”

The college of fetials was presided over by the *magister fetialium*, a permanent functionary. He was not identical with the *pater patratus*, who was, as such, appointed temporarily to officiate outside their ordinary sittings.¹ The *pater patratus* (so called because he pronounced, 'patrabat,' the oath on behalf of his nation²) was the head and the spokesman of the number of fetials when they were sent abroad on diplomatic missions, or for demanding the extradition of offenders, and for declaring war. He is designated by Plutarch the 'chief of the fetials,' μέγιστος τῶν φητιαλίων.³ He was elected by his colleagues, and was distinguished from them by the kind of robes he was clad in, and by his bearing certain insignia of the office.⁴ M. Weiss⁵ observes that there was a certain relationship between the *pater familias*, who was empowered to surrender the *filius familias* in satisfaction of a judgment in a noxal action (*noxae datio* or *deditio*⁶), and the *pater patratus*, who was instructed to surrender, or demand the surrender of, offenders against the law of nations ('*deditio per fetiales*').⁷ As has already been pointed out, there was, of course, and inevitably so, an indissoluble connection between many branches of private law and of international law.

The dress of the fetial magistrates when engaged on a mission was marked by extreme simplicity. They proceeded with their heads veiled, 'capite velato,' as if,

¹ Cf. Conradi, *De fecialibus*, loc. cit. § 7.

² Liv. i. 24: "pater patratus ad iusiurandum patrandum, id est sancendum fit foedus. . . ."—Plin. *Hist. nat.* xxii. 2, refers to the *pater patratus* as the *verbenarius*, for reasons which will presently appear.

³ *Quaest. Rom.* 62.—Cf. Serv. *Ad Aeneid.* ix. 53, where he is described the 'princeps fetialium.'

⁴ Dion. Hal. ii. 72: εἰς μὲν ἐκ τῶν εἰρηνοδικῶν, ὃν οἱ λοιποὶ προχειρίζαιντο, κεκοσμημένος ἐσθῆτι καὶ φορήμασιν ἱεροῖς, ἵνα διάδῃλος ᾖ παρὰ τοὺς ἄλλους, εἰς τὴν τῶν ἀδικούντων παρεγίνετο πόλις.

⁵ *Le droit fétial*, loc. cit.

⁶ Cf. Gaius, *Inst.* iv. 75 seq.; and see vol. i. pp. 117, 362, 369.

⁷ Cf. Cic. *Pro Caec.* 34, 98; *De orat.* i. 40, 181.

says a writer, in defiance of the seductions of the outside world,—“inaccessibles à la séduction de la beauté, de l'or et de l'éloquence.”¹ The veil of white wool, ‘flum lanae,’² appears to have been the symbol of justice, ‘imago iustitiae,’³ which was to preside over the international relationships of Rome. They bore on their heads a green garland, consisting of a tuft of vervain, *verbena*, with its roots, plucked from a particular place in the Capitol, together with the portion of the soil in which they grew.⁴ This, on the one hand, symbolized the country on whose behalf they were sent, and, on the other, was a token of inviolability.⁵

Their
privileges,
powers, and
functions.

The appointment of the fetials as members of the college was not of a temporary character; unless they committed some gross offence against the senate and people, they exercised their office for life,—*διὰ παντὸς ἱερωμένοι τοῦ βίου εἰρηνοφύλακες*.⁶ Apart from their enjoyment of inviolability (a privilege which has already been considered in reference to the position of ambassadors),⁷ they possessed all the prerogatives and honours which were incidental to the dignity of sacerdotal functionaries in general. Places were specially reserved for them in

¹ Weiske, *Considérations historiques et diplomatiques sur les ambassades des Romains comparées aux modernes* (Zwickau, 1834), § 39, p. 61.

² Cf. Liv. i. 32; Varro, *De ling. Lat.* vii. 3.

³ Aul. Gell. xiv. 4.

⁴ Liv. i. 24; xxx. 43: “Herbae id genus ex arce sumtum dari fetialibus solet.”—Cf. Serv. *Ad Aen.* xii. 120: “Verbenae sunt proprie herbae sacrae, sumtae de loco Capitolii, quibus coronabantur Feciales et pater patratus foedera facturi et bella indicaturi.”—Cf. also *Dig.* i. 8. 8. 1.

⁵ Servius says that *verbenae* were sacred boughs or branches of laurel, olive, or myrtle: “verbenas vocamus omnes frondes sacratas, ut est laurus, oliva, vel myrtus” (*Ad Aen.* xii. 120), and as such were not only borne by the fetials, but were carried by priests suing for protection (Cic. *Verr.* ii. 4, 50, 110), and were also used in sacrifices and other religious ceremonies (cf. Plaut. *Truc.* ii. 5. 27; Ter. *Andr.* iv. 3. 11; Hor. *Od.* i. 19. 14; iv. 11. 7; Ovid, *Met.* vii. 242; Sueton. *Vesp.* 7).

⁶ Dion. Hal. ii. 72.

⁷ See vol. i. pp. 328 *seq.*

public games, festivities, and other like solemnities.¹ Amongst various immunities, they were exempt from the payment of taxes and other civic burdens, and from military service.²

The exact nature of the duties of the college of fetials is a matter of some controversy. But we may safely say, with Mommsen, that the twenty 'State-heralds' ("das Collegium der zwanzig Staatsboten") constituted a living depository or archives, who preserved traditionally the remembrance of conventions concluded with neighbouring communities, expressed an authoritative opinion on alleged violations of treaty-rights, and, when necessity arose, demanded restitution and, in default of this, declared war. They occupied the same position with regard to the law of nations, as did the pontifices with regard to sacred law; and, consequently, they were, like the latter, competent to point out the law, though not to administer it.³ We may, in one respect, go further than Mommsen, in maintaining that these functions were not exclusively exercised in the case of cities with which treaties had been expressly established, but that they likewise applied to any regularly constituted State which had not forfeited the rights of international law by such gross offences as piracy, unjustifiable invasion, or deliberate treachery.

The duties of the fetials were of a threefold character,—sacerdotal, diplomatic, and judicial.

The religious character was shared by the Roman magistrates in general; and, in this connection, Cicero

As guardians
of religion.

¹ Cf. Arnobius, *Adversus gentes*, iv. 35.

² Cf. Dion. Hal. v. 1, as to certain other magistracies, with which the fetials were undoubtedly assimilated.

³ *Röm. Gesch.* vol. i. p. 169: "... bestimmt als lebendiges Archiv das Andenken an die Verträge mit den benachbarten Gemeinden durch Ueberlieferung zu bewahren, über angebliche Verletzungen des vertragenen Rechts gutachtlich zu entscheiden und nöthigenfalls den Sühneversuch und die Kriegserklärung zu bewirken. Sie waren durchaus für das Völkerrecht, was die Pontifices für das Götterrecht, und hatten daher auch wie diese die Befugniss Recht zwar nicht zu sprechen, aber doch zu weisen."

expiates on the prudent policy of appointing the same officials to preside over religious and political organizations,¹—thus effecting a perfect amalgamation of church and State. On certain occasions the censor made sacrificial offerings; and the praetors, and curule aediles presided at religious festivities.² The sanction of religion operated more or less in the case of every magistracy, every lay authority.³ In the same way there existed fundamentally a close bond of association between the conceptions of *fas*, *ius*, and *lex*,⁴ and it may be said, in a sense, that the fetials were an incarnation of the *ius*, on the one hand, and of the *fas* on the other. They were at the same time political officers of the State, judges, and ministers, as well as guardians, of the *fas*. They were protectors of the national religion, in so far as questions and proceedings relating to the law of nations were concerned. In their priestly capacity they presided over the expiatory sacrifices and the performance of solemnities that were incidental to the commencement of war, the establishment of peace, the conclusion of treaties, and other interstatal affairs of importance.

As
ambassadors.

As ambassadors, the fetials were despatched abroad in the name of the senate and the Roman people. They formulated the complaints of their State, demanded due redress, negotiated for the extradition of alien culprits, effected the delivery of such of their fellow-citizens as offended foreign countries, and carried out the various non-religious formalities relating to many momentous questions of peace and war. Their

¹ Cic. *Pro Domo*, i. 3.

² Varro, *De ling. Lat.* vi. 54; Athenaeus, xiv. 79.

³ Cf. Fustel de Coulanges, *La cité antique*, liv. iii. c. x. p. 211 *seq.*, where he emphasizes that divers elements were united in the person of the magistrate,—“sacerdoce, justice et commandement se confondent en sa personne.” He was vested with “des attributions sacerdotales et des attributions politiques.” With the exception of the plebeian tribunes, “il n’y avait pas de magistrat qui n’eût à accomplir quelque acte sacré; car dans la pensée des anciens toute autorité devait être religieuse par quelque côté.”

⁴ See vol. i. pp. 85 *seq.*

instrumentality in the conclusion of *foedera* imparted to these engagements a sacred character, apart from their juridical significance, which rendered them all the more obligatory and inviolable. As they watched over the faithful observance of formal compacts, they are sometimes called by Greek writers *εἰρηνοφύλακες* (guardians of peace).

As judges, they safeguarded the interests of the *fides* As judges. *publica*,—"fidei publicae inter populos praeerant,"¹ and delivered pronouncements regarding its alleged violation, when cases were submitted to them by the city magistrates. They determined whether a war was 'iustum,'—"bellum nullum nisi iustum,"—that is whether the preliminary proceedings were conducted in a legal manner, whether they fulfilled the requirements of the prescribed law. The significance of this conception of *iustum*, regularity, is seen in many transactions of Roman private law; it is implied in such expressions as 'iusta causa,' 'iusta causa tradendi,' 'iustus titulus,' 'iustum initium,' 'iustae nuptiae,' and the like. The judicial functions of the college of fetials are referred to by Cicero in his phrase, "belli oratores fetiales iudicesque sunt."² In the carrying out of these duties they enjoyed great independence. Their decisions were received with acquiescence; and very rarely indeed were there departures therefrom. No appeal lay against their judgments.³ Plutarch, discussing the numerous institutions of Numa, refers to that of the fetials as particularly indicating his love of justice.⁴ They were, he says, guardians of peace, and their name was derived from their office. They were to act as mediators in the event of international disputes, and oppose the adoption

¹ Varro, *De ling. Lat.* v. 15.

² Cic. *De leg.* ii. 9.—Cf. *ibid.*: "Foederum, pacis, belli, indutiarum oratorum fetiales iudices nuntii sunt; bella disceptant." (Other readings have been suggested for this passage.)

³ Cf. Dion. Hal. ii. 72, who does not say so explicitly; but it would appear so from his account, as well as from Livy's.

⁴ Plut. *Numa*, 12.

of violent measures, until all amicable means of obtaining justice had failed.¹ They were so convinced of the justice of their decision, when pronounced in favour of war, that they invoked the vengeance of the gods on themselves and their country if hostilities were declared by them unjustly. Without their explicit approval arms could not legitimately be taken up by any Roman, whether king or consul or common soldier; and the general, before taking measures for a campaign, was obliged to have it certified by them that the right was on his side.² Further, not only had they power, in their diplomatic capacity, to conclude peace and demand the due observance of treaties, but, as judges, they were entitled to set aside such as were entered into contrary to law. They also took cognizance of offences committed against ambassadors, and investigated the transgressions of the generals with respect to the *sponsiones* they made with the enemy without the sanction of their government.³ Numerous examples are found in ancient historical and other authors showing the frequent decisions pronounced by the fetials as to the sufficiency of alleged causes of war, and the avoidance of hostilities by the Roman military forces in the absence of just grounds.⁴

Some modern writers, as, for example, Fusinato,⁵ have denied that the fetials performed any judicial functions

¹ Plut. *Numa*, 12: . . . πολλάκις μὲν ἐβάδιζον ὡς τοὺς ἀδικούντας, αὐτοὶ πείθοντες εὐγνωμονεῖν.

² *Ibid.*: κωλύοντων δὲ τούτων ἢ μὴ συναινούντων οὔτε στρατιώτη θεμιτὸν οὔτε βασιλεῖ Ῥωμαίων ὄπλα κινεῖν· ἀλλὰ παρὰ τούτων ἔδει τὴν ἀρχὴν τοῦ πολέμου δεξάμενον ὡς δικαίου τὸν ἀρχοντα, τότε σκοπεῖν περὶ τοῦ συμφέροντος.

³ Dion. Hal. ii. 72: τὰ τε περὶ τοὺς πρεσβευτὰς ἀδικήματα δικάζειν, καὶ τὰ περὶ τὰς συνθήκας ὅσια φυλάττειν, εἰρήνην τε ποιέσθαι, καὶ γεγενημένην, ἐὰν μὴ κατὰ τοὺς ἱεροὺς δόξῃ πεπρᾶχθαι νόμους, ἀκυροῦν, καὶ τὰς τῶν στρατηγῶν παρανομίας, ὅσαι περὶ θ' ὄρκους καὶ σπονδὰς ἐπιτελοῦνται, διαγινώσκοντας ἀφοσιοῦσθαι.

⁴ Cf. Liv. xxxi. 8; xxxvi. 3; and see, further, *infra*.

⁵ *Le droit international de la république romaine* (in *Revue de droit international et de législation comparée*, Bruxelles, vol. xvii. 1885, pp. 278-296).

at all. It is true that in extradition cases another tribunal, namely that of the recuperators¹—the *iudicium recuperatorium*,—was called in to decide as to the alleged guilt of subjects or aliens whose delivery was demanded by the foreign government or by Rome respectively;² and that in these particular proceedings the fetials filled rather the part of diplomatic envoys. But in view of the preceding considerations and instances adduced, together with those to be set forth shortly, it is without doubt unjustifiable and directly contrary to unassailable facts to deny to the college of fetials all judicial competence. In many of the most vital questions of international law the exercise by them of judicial duties, whether directly or indirectly, is indisputable.

Now as to the various formalities necessary before the actual commencement of hostilities.³

When Rome had a grievance against a foreign State, the first step on the part of the fetials was *res repetere*, or *repetitum ire*, or *rerum repetitio*, the demand for satisfaction,⁴—generally rendered by Greek writers τὰ δίκαια αἰτεῖν (to demand justice).⁵ This Latin expression is the usual sacramental formula adopted in the earlier ages, and for the most part in classical times; in the more recent age we find the term *clarigatio*, *clarigare*, used as practically synonymous,⁶ which is, however, in form deprived of juridical associations. *Clarigatio* is also sometimes used by Livy in the sense of a fine imposed on an individual if found beyond prescribed

The order of
fetial
proceedings.

Res repetere
and *clarigatio*.

¹ See *supra*, pp. 83 *seq.*

² See vol. i. p. 364.

³ Cf. Dion. Hal. ii. 72, where he gives a succinct account of the customary proceedings, and the functions of the fetials.

⁴ Liv. iii. 25; iv. 30; vii. 6; viii. 22, 39; ix. 45; x. 12; xxxviii. 45; xlii. 25; Cic. *De off.* i. 11; Val. Max. ii. 2; Macrobian. *Saturn.* i. 16.

⁵ Dion. Hal. ii. 51, 72; iii. 3, 39; iv. 50.

⁶ Cf. Plin. *Hist. nat.* xxii. 2: "ac semper e legatis, cum ad hostes clarigatumque mitterentur, id est, res captas clare repetitum, unus utique verbenarius nominatur."—See also Servius, *Ad Aen.* ix. 53; x. 14.

limits.¹ Servius does not clearly discriminate between this word and *indictio* (actual declaration,—though used generally in such a phrase as ‘bellum indicere’²). The term *clarigatio* is probably derived, as Pliny and Servius suggest, from ‘clare’ (clearly, loudly), or ‘claritate vocis,’ in allusion to the public recital by the *pater patratus* of the demand made in the name of his country.³ Relying on certain passages⁴ in which the expression ‘peragere postulata’ occurs, in the sense of formulating the demand for restitution, Danz concludes that it was the exact equivalent of ‘clarigare.’⁵ But this inference is scarcely justifiable, on the ground that the connotations of the respective terms are not co-extensive; ‘clarigare’ includes ‘peragere postulata,’ but also implies other elements not necessarily incidental to the latter,—in the same way, as Fusinato observes, as the solemn *iusiurandum* has a wider significance than the mere enunciation of the *promissum*.⁶

The demand was made by the *pater patratus* who was, for the purposes of the particular mission, the head of a varying number, four, or three, or even two, of delegated fetials.⁷ Such demand, as has been pointed out, was for the delivery of offenders, for the restoration of things unjustifiably taken from the Romans or their allies, or for the withdrawal of forces

¹ Liv. viii. 14.

² Cf. Cic. *In Catil.* ii. 6. 14; Varro, *De vita pop. rom.* ii. 13; etc.

³ Plin. *Hist. nat.* xxii. 2, as in note 6, p. 329; Serv. *Ad Aen.* ix. 53: “Et haec clarigatio dicebatur a claritate vocis.”

⁴ For example, Liv. i. 18, 24, 28, 32; iii. 40, 47; vi. 46; Plin., *Hist. nat.* xxii. 2.

⁵ *Der sacrale Schutz*, pp. 181-2: “Hieran kann aber um so weniger gezweifelt werden, als hier das peragere postulata offenbar gleichbedeutend ist mit clarigare.”

⁶ *Dei feziali* . . ., *loc. cit.* p. 501: “. . . nello stesso modo che non costituisce tutto l'*iusiurandum* l'enunciazione del *promissum*.”

⁷ Varro, *De vita pop. rom.* ii. 13: “Itaque bella et tarde et magna diligentia suscipiebant, quod bellum nullum nisi pium putabant geri oportere; priusquam indicerent bellum iis a quibus iniurias factas sciebant, fetiales legatos res repetitum mittebant quatuor. . . .”

from the territory of an allied country.¹ It was not always that merely material restitution was demanded, notwithstanding the use of such terminology as 'res reddere'; indeed this phrase, as Servius says, was adopted by the earlier writers to denote the offering of satisfaction or making amends in a broad sense, just as they spoke of 'res rapere' even when there was not any act of rapine proper.²

A few examples of this proceeding may be given from Livy. In 358 B.C. Rome demanded of the Tiburtians reparation through the fetials, "per fetiales rebus repetitis," for shutting their gates against the Roman forces, as they were peacefully returning from Ferentinum, a city taken from the Hernicans. Previous grievances were also alleged, but this was the determining cause, "ea ultima fuit causa."³ In 354 B.C. the Faliscans were declared a public enemy because their youth had taken up arms in conjunction with the Tarquinians, and because they had refused to surrender, on the demand of the fetials, those who had fled to Falerii.⁴ In 340 B.C. the Campanians solicited the alliance of the Romans, threw themselves on their protection, and begged aid against the Samnites. Accordingly the Romans sent ambassadors to request the latter not to carry hostilities into territory that had become the property of the Roman people; and, on account of the fierce defiance of the Samnites, fetials were despatched to demand satisfaction, "... fetialibus ad res repetendas missis."⁵ In 326 B.C. the Palae-

Examples of
repetitio
rerum.

¹ See *supra*, pp. 182 *seq.*, as to causes justifying war.

² *Ad Aen.* x. 14: "Veteres res rapere dicebant, etiamsi rapinae nullum crimen existeret; similiter satisfacere res reddere dicebant."—Cf. Liv. iv. 30; vii. 6.

³ Liv. vii. 9.

⁴ Liv. vii. 16: "Ad bella nova priore anno destinata Falisci quoque hostes exorti duplici crimine, quod et cum Tarquiniensibus iuventus eorum militaverat et eos qui Falerios perfugerant, cum male pugnatum est, repentibus fetialibus Romanis non reddiderant."

⁵ Liv. vii. 32.

politans, a people of Campania, taking advantage of the treacherous character of the alliance of the Samnites with Rome, and encouraged by a report that a pestilence had attacked the city, committed various acts of hostility against those Romans who had been established in the Campanian and Falernian territories. Therefore fetials were sent to demand satisfaction, which was haughtily refused; whereupon the people, by the direction of the senate, ordered war to be declared against them.¹ In 320 B.C. envoys were sent to the Samnites to demand the surrender of the author of the war which the latter had waged against Rome.² In 303 B.C. fetials proceeded to the Aequans to demand satisfaction, "res repetitum," because they had aided the Samnites, and taken the part of the enemy of the Romans.³ In 298 B.C. ambassadors from the Lucanians arrived in Rome to complain that the Samnites, after having in vain offered them bribes to secure their alliance in the war, marched an army into their country and devastated it, so as to force them into a war; and therefore they begged the Romans to take them into their protection. Accordingly the senate decided that a compact should be concluded with Lucania, and reparation demanded from the Samnites. Fetials were then sent to insist on the offenders that they should withdraw their troops from the country of the Roman allies.⁴ Similarly, in 293 B.C. fetials were despatched to demand satisfaction from the Faliscans for having committed acts of aggression on the territory of allies of Rome.⁵

The particular grievance was set forth by the *pater patratus* at the frontiers of the offending city; and he

¹ Liv. viii. 22: "... fetialibus Palaepolim ad res repetendas missis . . . ferox responsum, ex auctoritate patrum populus . . . bellum fieri iussit."

² Liv. viii. 39.

³ Liv. ix. 45.

⁴ Liv. x. 12: "fetiales missi, qui Samnitum decedere agro sociorum ac deducere exercitum finibus Lucanis iuberent."—Cf. viii. 19.

⁵ Liv. x. 45.—Cf., for other examples, Liv. xxix. 3; xxxvi. 28; xxxviii. 33; etc.

invoked the gods to bear witness to the justice and piety of his demand. Thus Livy relates (in reference to an example of earlier practice) that the fetial envoy, having arrived at the frontiers of the nation from whom restitution was demanded, pronounced first the following formula :

‘Hear, O Jupiter, hear, ye territories [naming the country in question], let the law of heaven hear. I am the State envoy of the Roman people ; I come, as their ambassador, in all justice and piety, and let my words gain credence.’

What was demanded was thereupon specified, followed by a solemn appeal to Jupiter :

‘If I unjustly or impiously demand those persons and those things to be given up to me, as the messenger of the Roman people, then never permit me to enjoy my native country.’

These words of the declaration and oath were repeated, with some slight modification, on crossing the frontiers, on meeting the first man, on entering the gate, and on reaching the forum.¹

By the law of war, hostilities could rightly be commenced after duly demanding satisfaction, and pronouncing a formal declaration ;² but it was considered wrong and impious to make a *repetitio rerum* serve as a cover for waging an unjustifiable war, especially such war as had already been resolved on beforehand. Thus

The *repetitio rerum* not to serve as a cover.

¹ Liv. i. 32 : “Legatus ubi ad fines eorum venit, unde res repetuntur, capite velato filo (lanae velamen est), ‘Audi, Iuppiter,’ inquit ‘audite, fines’ (cuiuscunque gentis sunt, nominat) ; ‘audiat fas ; ego sum publicus nuntius populi Romani ; iuste pieque legatus venio, verbisque meis fides sit.’ Peragit deinde postulata. Inde Iovem testem facit : ‘Si ego iniuste impieque illos homines illasque res dedier mihi exposco, tum patriae compotem me nunquam siris esse.’ Haec, quum fines suprascandit ; haec, quicunque ei primus vir obvius fuit, haec portam ingrediens, haec forum ingressus, paucis verbis carminis concipiendique iurisiurandi mutatis, peragit.”

² Cic. *De offic.* i. II, 36 : “Ex quo [that is, the *ius fetiale*] intelligi potest nullum bellum esse iustum nisi quod aut rebus repetitis geratur aut denunciatum ante sit et indictum.”

Caius Pontius, the commander of the Samnites, declared, when a Roman embassy had come to demand restitution and left without making peace, that his countrymen had duly expiated their infraction of the treaty by restoring the spoils, and delivering up the authors of the war together with their possessions. "I am fully confident," said he, "that whatever deities they were whose will it was that you should be reduced to the necessity of making the restitution, which had been demanded according to the treaty, it was not agreeable to them that our atonement for the breach of treaty should be so haughtily spurned by the Romans. For what more could possibly be done for appeasing the gods and softening the anger of men, than we have done?"¹

Purgation by
noxae deditio.

The practice of *noxae deditio*, the surrender of the person or thing whereby the injury complained of was caused (which has already been considered in reference to extradition²), played an important part in ancient times; and by acting in conformity with the customary practice, Caius Pontius held—and rightly so—that his country was exonerated from all further liability. The delivery of a culprit or of property seized without valid cause was effected partly in deference to juridical claims, and partly (as the original basis of the proceeding) to avoid the possibility of contagion—"ne quid ex contagione noxae remaneret apud nos"³—which, in the eyes of the gods, would result if the said culprit or property was not given up.

Offending
State to be
given
opportunity to
reply.

Further, the setting forth of a demand under such circumstances as did not afford an opportunity to the offender or the adversary to make a proper answer was held to be a violation of the *religio*.⁴ In 407 B.C. when

¹ Liv. ix. 1: "Satis scio, quibuscunque diis cordi fuit subigi nos ad necessitatem dedendi res, quae ab nobis ex foedere repetitae fuerunt, is non fuisse cordi tam superbe ab Romanis foederis expiationem spretam. quid enim ultra fieri ad placandos deos mitigandosque homines quam quod nos fecimus?"

² See vol. i. pp. 362 seq.

³ Liv. ix. 1.

⁴ Liv. iv. 58.

the truce with the Veientians had expired, fetials were sent to demand restitution. They were met on the frontiers by Veientian ambassadors, who requested that they should not proceed to Veii, until they (the Veientian envoys) obtained access to the Roman senate to lay an appeal before it. This was granted; and the senate also agreed afterwards that, owing to the Veientians being distressed by intestine dissension, restitution would not be insisted on;—for the Roman government, comments Livy, was far from seeking in the troubles of others an opportunity for advancing its own interests.¹

After making the demand for restitution, the fetials returned to Rome; and a period of thirty-three days was allowed for the due fulfilment thereof. If the delivery of the person or persons demanded (as in the case specifically mentioned by Livy, when he relates the successive steps of the procedure²) was not effected by the end of that interval, the fetials were despatched a second time; and on this occasion the *pater patratus* threatened the defaulting nation with war, and called on Jupiter and all the other divinities to witness the injustice of the refusal.

Return of
fetials—
interval of
thirty-three
days.

‘Hear, O Jupiter, and thou, Janus Quirinus, and all ye gods of heaven, ye of earth, and ye beneath the earth, give ear! I call you to witness that this nation [naming it] is unjust, and does not act agreeably to law; but we will take counsel with the elders in our own country concerning these matters, and by what means we may obtain our rights.’³

¹ Liv. iv. 58: “Eo anno quia tempus indutiarum cum Veienti populo exierat, per legatos fetialesque res repeti coepta. quibus venientibus ad finem legatio Veientium obviam fuit. petiere ne prius quam ipsi senatum Romanum adissent, Veios iretur. ab senatu imperatum, quia discordia intestina laborarent Veientes, ne res ab iis repeterentur: tantum a fuit ut ex incommodo alieno sua occasio peteretur.”

² Liv. i. 32.

³ Liv. i. 32: “Si non deduntur, quos exposcit, diebus tribus et triginta (tot enim sollemnes sunt) peractis bellum ita indicit: ‘Audi, Iuppiter, et tu, Iane Quirine, diique omnes caelestes, vosque terrestres

Report to the
senate.

On their return to Rome the fetials appeared before the senate. They stated that they had conducted all their proceedings and performed all ceremonies as prescribed by the *ius fetiale*, and then set forth the result of their mission, declaring that in view of the rejection of their demand, war could be legitimately undertaken to enforce it, if the senate and people thought fit to do so. Under the monarchy, the senate was, of course, presided over by the king; under the Republic, by the consuls, or, in their absence, by the magistrates entitled to act as substitutes, *e.g.* the decemvirs, the military tribunes, the dictator, the prefect of the city, or, failing these, by the praetor.¹

Proceedings in
the senate.

In Livy's account of the earlier practice, he says that the king then put to the senate the question relating to the things that ought to be given up, and the differences that were to be settled, and which, according to the report of the *pater patratus*, had not been so delivered or satisfaction given therefor; and then he asked each senator to state his opinion.² The senator, who was thus addressed, rose, and gave his decision:

'I think that the demand should be enforced by a just and regularly declared war, and I give my vote accordingly.'

When the others had been similarly asked in due order, the war was resolved on if the majority of the votes so decided.³

vosque inferni, audite; ego vos testor populum illum' (quicumque est, nominat), 'iniustum esse neque ius persolvere; sed de istis rebus in patria maiores natu consulemus, quo pacto ius nostrum adipiscamur.'

¹ Liv. xxii. 55.

² Liv. i. 32: "'Quarum rerum litium causa condixit pater patratus populi Romani Quiritium patri patrato Priscorum Latinorum hominibusque Priscis Latinis, quas res nec dederunt nec solverunt nec fecerunt, quas res dari, solvi, fieri oportuit, dic,' inquit ei, quem primum sententiam rogabat, 'quid censes.'"

³ Liv. i. 32: "'Tum ille: 'Puro pioque duello quaerendas censeo, itaque consensio consciscoque.' Inde ordine alii rogabantur; quandoque pars maior eorum, qui aderant in eandem sententiam ibat, bellum erat consensum.'"

The vote of the senatorial majority, however, was not always final; for the opinion of the people soon began to be of force. From about the beginning of the fifth century B.C. they took part in determining questions of peace and war. Thus as early as 427 B.C., in connection with the war against the Veientians, the fetial formalities had been regularly adopted; but a dispute arose whether a war should be declared by the order of the people, or whether a decree of the senate would alone suffice. The tribunes opposed the latter alternative, and, threatening they would stop the levy, prevailed; and the consuls were accordingly obliged to put the question to the popular vote.¹ In 383 B.C., by a decree of the senate and an order of the people, war was declared against the Praenestines.² In 351 B.C. Titus Manlius, the dictator, declared war against the Caeritians by order of the people and with the sanction of the senate.³ And so on regularly. The question of the contemplated war was submitted to the assembly of the people, and was approved or opposed by them with the same formality as obtained when ordinary propositions of law were referred to them. To the question: 'Is it your will, is it your command, Romans?' ('Vultis, iubetis, Quirites?'), they answered either in the negative, 'Antiquo,'⁴ or in the affirmative, 'Uti rogas.'⁵ The

¹ Liv. iv. 30: "controversia inde fuit, utrum populi iussu indiceretur bellum, an satis esset senatus consultum. pervicere tribuni denunciando inpedituros se delectum, ut Quinctius consul de bello ad populum ferret. omnes centuriae iussere."

² Liv. vi. 22: "... ex senatus consulto populi iussu bellum Praenestinis indictum."

³ Liv. vii. 19: "ex auctoritate patrum ac populi iussu Caeritibus bellum indixit."

⁴ Liv. xxxi. 6 (in connection with the proposed Macedonian war, 200 B.C.): "rogatio de bello Macedonico primis comitiis ab omnibus ferme centuriis antiquata est."

⁵ Liv. xxxi. 8 (on the second meeting of the people, following the address of the consul, Publius Sulpicius, they declared for the war as he had proposed): "Ab hac oratione in suffragium missi, uti rogarer, bellum iusserunt."

law thus voted, having been carried in the *comitia centuriata*,¹ became a *lex centuriata*.²

Prayers and
sacrifices.

In the interval between the issue of the senatorial decree and the meeting of the *comitia centuriata* prayers and sacrifices were offered up, generally by the consuls, in order to propitiate the gods, and procure their aid in the approaching conflict. Thus in 200 B.C., in view of the war with Philip, the senate decreed that the consuls should perform sacrifices with the greater victims to such gods as they would deem fitting, with prayers to this effect—‘that the affairs which the senate and people were then deliberating in regard to the State, and the entering on a new war might issue prosperously and happily to the Roman people, the allies, and the Latin confederacy.’³ Similarly, in 191 B.C. the consuls, Publius Cornelius Scipio and Manius Acilius Glabrio, were directed by the senate, on account of the approaching war with Antiochus, to perform sacrifices and offer up prayers.⁴ And, again, when the people had confirmed the senate’s decision in favour of war, further prayers and sacrifices were offered up. Thus in 200 B.C., after war against Philip had been decided upon, a three days’ supplication was proclaimed by the consuls in pursuance of a *senatusconsult*; and prayers were offered to the

¹ From a passage in Livy (vi. 21: “tum et bellum iuberent, latum ad populum est, omnes tribus bellum iusserunt”), it would appear at first sight as though the *comitia tributa* confirmed the projected war; but, as M. Weiss points out, the word *tribus* was often used apart from the more technical sense to represent the people generally;—“cependant on aurait tort, suivant nous, d’attribuer à cette forme de langage une importance excessive; les textes emploient souvent le mot *tribus* pour désigner l’universalité du peuple romain” (*Droit féodal, loc. cit.* p. 483).

² Cf. Liv. iv. 30; xlii. 30.

³ Liv. xxxi. 5: “senatus decrevit, uti consules maioribus hostiis rem divinam facerent, quibus diis ipsis videretur, cum precatone ea, quod senatus populusque romanus de re publica deque ineundo novo bello in animo haberet, ea res uti populo romano sociisque ac nomini Latino bene ac feliciter eveniret.”

⁴ Liv. xxxvi. 1.

gods at all the shrines that the war might have a successful and happy issue.¹

After all these formalities and solemnities had been duly performed, the fetials proceeded once more and for the last time to the frontiers of the people in question (say, the Latini), and in the presence of at least three grown-up persons the *pater patratus* made this declaration:

Final despatch
of fetials.

‘Inasmuch as the Latin States and people have transgressed against the Roman people, the senate and people of Rome have resolved, agreed, and voted that there should be war with the Latini; whereupon I and the Roman people declare and make war on the Latini.’² After uttering these words he threw within the enemy’s territory a spear, pointed with steel, or burnt at the end and dipped in blood,—“*hastam ferratam aut praeustam sanguineam.*”³ This was an indication that open and regular hostilities had then and there commenced.⁴

¹ Liv. xxxi. 8: “*Supplicatio inde a consulibus in triduum ex senatus consulto indicta est, obsecratique circa omnia pulvinaria dii, ut quod bellum cum Philippo populus iussisset, id bene ac feliciter eveniret.*”

² Liv. i. 32: “*Quod populi Priscorum Latinorum hominesque Prisci Latini adversus populum Romanum Quiritium fecerunt, deliquerunt, quod populus Romanus Quiritium bellum cum Priscis Latinis iussit esse, senatusque populi Romani Quiritium censuit, consensit, conscivit ut bellum cum Priscis Latinis fieret, ob eam rem ego populusque Romanus populis Priscorum Latinorum hominibusque Priscis Latinis bellum indico facioque.*”

³ *Ibid.*—Cf. Ammianus Marcellinus, xix. 2. 6: “*Vix ubi Grumbates hastam infectam sanguine urit patrio, nostrique more coniecerat fetialis, armis exercitus concrepans involat in muros.*” Similarly Dion Cassius, lxxi. 33, speaks of a blood-red spear, τὸ δόρυ τὸ αἱματώδες, hurled by Marcus Antoninus, before he set out to make war on the Scythians.

⁴ Servius, *Ad Aen.* ix. 53, concisely summarizes to the same effect the formal proceedings adopted. He says that when Rome wanted to declare war on a foreign people for injury to allies or refusal to deliver up offenders, the *pater patratus*, as the head of the fetial envoys, after a period of thirty-three days proceeded to the enemy’s territory, and after certain solemn pronouncements proclaimed war, and hurled his javelin. “*Cum enim volebant bellum indicere, pater patratus h.e. princeps fetialium proficiscebatur ad hostium fines et*

Vows and
incantations.

Apart from the requirements of the law of nations, as conceived and practised by the Romans, there were frequently certain other religious preliminaries before the final clash of arms. Although such matters as vows (*vota*) offered to the tutelary divinities, and incantations are not really of the substance of ancient international law, it will none the less be of interest to refer to some of these to indicate, at all events, the widespread and unceasing devotion to the gods, as well as the nature of the combatants' attitude to each other.¹

Sometimes the emperor or the dictator before joining battle, or laying siege to a town, or proceeding to take it by assault invoked the supreme gods—with the accompaniment of appropriate gestures and actions—imploring them to hurl disasters on the enemy, and consecrating to them the persons and lands of the hated adversary. “Dis pater Veiovis Manes, or by whatever name it is permitted to invoke you, I entreat you to overwhelm with panic and confusion this city of Carthage and its army. May this army, these men, these enemies who bear arms against our army and legions, may their cities and territories and all dwelling therein be overwhelmed with disaster by you and deprived of the light of heaven, and may they one and all be devoted and consecrated to you, in accordance with the laws prescribing such consecration. By virtue of my magistracy I dedicate them to you in place of ourselves—myself, the Roman people, and our legions and armies—so that you may preserve us in the engagement we are about to enter on. If you do this, then may whosoever vows to offer up three black sheep to

praefatus quaedam sollemnia clara voce dicebat, se bellum indicere propter certas causas, aut quia socios laeserant aut quia nec abrepta animalia nec obnoxios redderent. . . . Post quam clarigationem hasta in eorum fines missa indicabatur iam pugnae principium.”

¹ On the different formulas adopted in this connection, cf. C. I. Ansaldi, *De diis multarum gentium Romam evocatis: sive de obtinente olim apud Romanos deorum praesidium in oppugnationibus urbium evocatione* (Brixiae, 1743).

you duly perform the sacrifice. Earth, our mother, and thou, Jupiter, I call you to witness.”¹

In addition to this, an appeal was sometimes made to the very gods of the enemy to induce them, by promises of greater devotion and honours, to forsake their votaries and go over to the other side. The sacrifice of victims followed the pronouncement of the formula, which was to the following effect: “If there is a god, if there is a goddess under whose guardianship this city and this people of Carthage may be, I beseech you, I conjure you, I beg you as a grace, O great god who have taken this town and people under your protection, to abandon the people and city of Carthage, to desert their habitations, temples, and sacred objects, to overwhelm this city and people with fear, with terror and confusion, and, after having forsaken them, to come over to us; may our houses and temples, our sacred objects and our city be more agreeable and acceptable to you, so that we may know and understand that henceforth you are to be propitious to me, to the Roman people and the army. If you do so, I make a vow to found temples and establish games in your honour.”²

Appeal to the enemy's gods.

¹ Macrobius, *Saturnalia*, iii. 9: “Dis pater Veiovis Manes, sive quo alio nomine fas est nominare, ut omnes illam urbem Carthaginem exercitumque, quem ego me sentio dicere, fuga formidine terrore compleatis, quique adversum legiones exercitumque nostrum arma telaque ferent, uti vos eum exercitum eos hostes eosque homines urbes agrosque eorum, et qui in his locis regionibusque agris urbibusque habitant, abducatis, lumine supero privetis, exercitumque hostium urbes agrosque eorum quos me sentio dicere, uti vos eas urbes agrosque capita aetatesque eorum devotas consecratasque habeatis ollis legibus, quibus quandoque sunt maxime hostes devoti. eosque ego vicarios pro me fide magistratuque meo pio populo Romano exercitibus legionibusque nostris do devoeo, ut me meamque fidem imperiumque legiones exercitumque nostrum, qui in his rebus gerundis sunt, bene salvos servetis esse. Si haec ita faxitis, ut ego sciam sentiam intellegamque, tunc quisquis hoc votum faxit, uti faxit, recte factum esto ovibus atris tribus. Tellus mater teque Iuppiter obtestor.”

² Macrob. *Saturnal.* iii. 9: “Si deus, si dea est, cui populus civitasque Carthaginiensis est in tutela, teque maxime, ille qui urbis huius

A somewhat similar invocation is related by Livy to have been uttered by the dictator Marcus Furius Camillus in 396 B.C., before his onslaught on the city of Veii. After taking the auspices the dictator thus called on Apollo and Juno: "Under thy guidance, O Pythian Apollo, and inspired by thy divinity I proceed to destroy the city of Veii, and I vow to thee a tenth part of the spoil. Thee also, queen Juno, who inhabitest Veii, I beseech, that thou wilt accompany us, when victors, into our city, soon to be thine, where a temple worthy of thy majesty shall receive thee."¹

Appeals and imprecations of this kind were likewise known to the Greeks. Thucydides reports the pronouncement made by Archidamus, the Lacedaemonian king, before beginning the siege of Plataea, 429 B.C.; but in this case the gods of the country were implored not to bestow mere favours, but to permit the just punishment of iniquitous conduct. "O ye gods and heroes who possess the land of Plataea, be our witnesses that our invasion of this land in which our forefathers prayed to you when they conquered the Persians, and which you made a propitious battlefield to the Hellenes, has thus far been justified, for the Plataeans first deserted the alliance; and that if we

populique tutelam recepisti, precor venerorque veniamque a vobis peto, ut vos populum civitatemque Carthaginiensem deseratis, loca templa sacra urbemque eorum relinquatis, absque his abeatis, eique populo civitati metum formidinem oblivionem iniciatis, proditique Romam ad me meosque veniatis, nostraque vobis loca templa sacra urbs acceptior probatiorque sit, mihi que populoque Romano militibusque meis propitii sitis, ut sciamus intellegamusque. Si ita feceritis, voveo vobis templa ludosque facturum."—Macrobius states he extracted these formulas from the fifth book of the *Treatise on Secret Things* by Sammonicus Serenus (who appears to have been highly esteemed in Rome in the early part of the third century A.D. for his knowledge and good taste).

¹Liv. v. 21: "tuo ductu," inquit, "Pythice Apollo, tuoque numine instinctus pergo ad delendam urbem Veios, tibi que hinc decimam partem praedae voveo. te simul, Iuno regina, quae nunc Veios colis, precor, ut nos victores in nostram tuamque mox futuram urbem sequare, ubi te dignum amplitudine tua templum accipiat."

go further we shall be guilty of no crime, for we have again and again made them fair proposals and they have not listened to us. Be gracious to us, and grant that the real authors of the iniquity may be punished, and that they may obtain revenge who lawfully seek it.”¹

It has been asserted in some quarters that the fetial formalities and proceedings were simply a cover for shielding arbitrary conduct and imparting thereto an appearance of legality. Thus one French writer describes the college of fetials as a magnificent façade without any solid structure behind it,—“leur collège des fétiaux est une façade magnifique ; mais derrière elle vous cherchiez en vain le monument qu'ils n'ont jamais construit” ;² and, again, Laurent speaks of fetial law as a legal hypocrisy fastening on solemnities with a pharisaic respect, but disregarding the interests of justice,—“hypocrisie légale qui s'attachait aux solennités avec un respect pharisaique, sans s'inquiéter de la violation de la justice.”³ Statements of this kind, however, are gross exaggerations, and are largely due to the biased modern attitude which, in regard to the judging of ancient questions, unconsciously or indifferently lays down the broad criteria which are the product of many centuries of progress.⁴ That there were sometimes abuses or infringements of the fetial law, as of every other legal institution—and subtle,

Was the fetial procedure a cover for arbitrary policy?

¹Thuc. ii. 74: “Θεοὶ ὅσοι γῆν τὴν Πλαταιίδα ἔχετε καὶ ἥρωες, ξυνίστορες ἔστε ὅτι οὔτε τὴν ἀρχὴν ἀδίκως, ἐκλιπόντων δὲ τῶνδε πρότερον τὸ ξυνώμοτον, ἐπὶ γῆν τήνδε ἤλθομεν, ἐν ἣ οἱ πατέρες ἡμῶν εὐξάμενοι ὑμῖν Μῆδων ἐκράτησαν καὶ παρέσχετε αὐτὴν εὐμενῆ ἐναγωνίσασθαι τοῖς Ἑλλησιν, οὔτε νῦν, ἣν τι ποιῶμεν, ἀδικήσομεν· προκαλεσάμενοι γὰρ πολλὰ καὶ εἰκότα οὐ τυγχάνομεν. ξυγγνώμονες δὲ ἔστε τῆς μὲν ἀδικίας κολάζεσθαι τοῖς ὑπάρχουσι προτέροις, τῆς δὲ τιμωρίας τυγχάνειν τοῖς ἐπιφέρουσι νομίμως.”—Cf. the vow of Eteocles, in Aesch. *Seven against Thebes*, 267 seq.

²M. Revon, *L'arbitrage international* (Paris, 1892), pp. 96-97.

³*Hist. du dr. des gens*, vol. iii. pp. 17-18.

⁴Cf. Fusinato, *Dei feziali*, *loc. cit.* p. 495.

unconscionable evasions of the law, municipal as well as international, are not foreign to modern communities—cannot in truth be denied; nevertheless, it is indisputable that the *ius fetiale* (to mention no other provisions of the Roman law of nations), presented a progressive system, and exercised a salutary influence in controlling the excessive enormities of warfare to which many peoples of antiquity were given, and in regularizing the proceedings relating to the commencement of war, the conclusion of peace and treaties, and various intermediate incidents. The exposition of all these matters in the foregoing chapters will, it is confidently hoped, fully bear out this conclusion.

When fetial
formalities
dispensed with!

Under certain circumstances, it is true, the Romans sometimes dispensed with the fetial procedure prior to commencing hostilities; as, for example, against a body of people not regularly organized as a State, in the proper sense of the term, and against a community that made a sudden attack on Rome or on any of her territories, when, of course, the fulfilment of all requirements was thereby rendered impossible or useless. Similarly, in the later epoch of her history certain modifications of the earlier strict methods were gradually introduced. But even in these instances doubtful questions were not infrequently submitted to the fetials. Thus, in connection with the war with Antiochus, king of Syria, and the Aetolians, 191 B.C., the consul, Manius Acilius, by direction of the senate, consulted the college of fetials, whether a declaration of war should be made to Antiochus in person, or whether it would suffice to declare it at some garrison town; whether they thought it necessary to make a separate declaration against the Aetolians, and whether their alliance and friendship ought not to be renounced before declaring war. The fetials replied that, following a decision they had delivered before in reference to the case of Philip, it was immaterial whether the proclamation were made to Antiochus personally or at one of

his garrisons; that, as to the Aetolians, friendship had already been renounced by their refusal to make restitution or apology when demanded by Rome, and that declaration in their case could be dispensed with as they had of their own accord seized Demetrias, a city in alliance with Rome, besieged Chalcis, and brought Antiochus into Europe to wage war against the Romans.¹

Again, a few years earlier, in 200 B.C. (the precedent referred to in the last example) the consul Sulpicius inquired of the fetials whether the declaration of hostilities should be made against Philip in person, or whether it would be sufficient to make the proclamation at the nearest garrison within the frontiers of the kingdom; to which they replied that either course would be legitimate and valid.²

Under the later Republic and under the Empire, there was, it must be admitted, a certain transformation of the spirit and substance of the *ius fetiale*.³ The

Decline of the
old formalities.

¹ Liv. xxxvi. 3: "Consul deinde M. Acilius ex senatus consulto ad collegium fetialium retulit, ipsine utique regi Antiochio indiceretur bellum, an satis esset ad praesidium aliquod eius nuntiari; et num Aetolis quoque separatim indici iuberent bellum, et num prius societas et amicitia eis renuntianda esset quam bellum indicendum. Fetiales responderunt, iam ante sese, quum de Philippo consulerentur, decrevisse nihil referre, ipsi coram an ad praesidium nuntiaretur; amicitiam renuntiatam videri, quum legatis toties repetentibus res nec reddi nec satisfieri aequum censuissent; Aetolos ultro sibi bellum indixisse, quum Demetriadem, sociorum urbem, per vim occupassent, Chalcidem terra marique oppugnatum issent, regem Antiochum in Europam ad bellum populo Romano inferendum traduxissent."

² Liv. xxxi. 8: "consultique fetiales ab consule Sulpicio, bellum quod indiceretur regi Philippo, utrum ipsi utique nuntiari iuberent, an satis esset in finibus regni quod proximum praesidium esset, eo nuntiari, fetiales decreverunt, utrum eorum fecisset, recte facturum."

³ Cf. W. Rein, in Pauly's *Real-Encyclop.* vol. iii. p. 467, s.v. *Fetiales*: "Indem es ihre Hauptaufgabe war, darüber zu wachen, dass die Römer keinen ungerechten Krieg führten, hatten sie vor Alters die innere Rechtmässigkeit des zu führenden Kriegs zu untersuchen; später aber erstreckte sich ihre Wirksamkeit nur auf die äusseren Formalitäten und Ceremonien bei dem Anfang eines Kriegs, und die freigebigen Lobsprüche, welche die alten Classiker den Fetialen

Romans began gradually to omit the detailed and prolonged proceedings relating to the proclamation of war. During the war with Pyrrhus, king of Epirus (which began in 282 B.C.), it is related that as the enemy's territory was situated across the sea, and there was no convenient place for carrying out the regular formalities prior to making war, one of the enemy's prisoners was made to purchase a small portion of land in the Flaminian circus; and this the Romans used as hostile territory for the purpose of their proclamation instead of despatching the fetial ambassadors to the adversary's frontiers.¹ In 296 B.C., during the war with the Samnites, Appius Claudius had erected the first temple of Bellona (goddess of war) in the Campus Martius close to the Circus Flaminius.² Later, this temple was used both for the reception of foreign ambassadors,³ when it was decided not to admit them into the city, and for declaring war. The area of the temple was considered to represent the enemy's territory, 'ager hostilis,' and the pillar, which stood in front of the entrance, symbolized the frontier; so that the commencement of hostilities was formally proclaimed by hurling a spear over the pillar. As Ovid says: "Before the temple a narrow court looks out over the upper circus. There is a small column of no small fame; thence they are wont to hurl the spear that is the herald of war, when it is resolved to take up arms

spenden, als ob sie wahre Richter der Gerechtigkeit eines Kriegs gewesen wären, passen nur für die alte Zeit, so lange die Römer in Führung der Kriege gewissenhaft waren. Später kam es ihnen nicht mehr darauf an, ob der Krieg ein gerechter im wahren Sinn des Worts sei, sobald ihre politischen Zwecke denselben empfahlen. . . ."

¹ Servius, *Ad Aen.* ix. 53: "... Cum Pyrrhi temporibus adversus transmarinum hostem bellum Romani gesturi essent, nec invenirent locum ubi hanc solemnitatem per fetiales indicendi bellum celebrarent, dederunt operam ut unus de Pyrrhi militibus caperetur, quem fecerunt in circo Flaminio locum emere, ut quasi in hostili loco ius belli indicendi implerent; denique in eo loco ante aedem Bellonae consecrata est columna."

² Liv. x. 19; Ovid, *Fasti*, vi. 201 seq.

³ See vol. i. p. 320.

against kings and nations.”¹ Dion Cassius relates that war was in this manner declared against Cleopatra,² and also by Marcus Antoninus against the Scythians.³

Again, on subsequent occasions the preliminary proceedings were from time to time still further abridged. At the time of the second Punic war, 218 B.C., Quintus Fabius and four other ambassadors were despatched to Carthage to demand reparation for Hannibal’s aggressive conduct; and as the Carthaginian senate repudiated the claim, the Roman envoy, says Livy, formed a fold in his robe and said: ‘Here we bring you peace and war, take which you please,’—“tum Romanus, sinu ex toga facto, ‘hic,’ inquit, ‘vobis bellum et pacem portamus; utrum placet, sumite.”⁴ Aulus Gellius gives a different version of this incident; but it shows equally well the curtailment of proceedings and omission of the old formalities. He says that Quintus Fabius delivered to the Carthaginians a letter which stated that the Roman people had sent them a spear and a herald’s staff—two tokens, the one of war, the other of peace—of which they might choose whichever they pleased. He adds that according to Marcus Varro it was not even an actual spear and an actual staff that were sent, but only the images of these objects engraved on two small *tesseræ*.⁵

¹ Ovid, *Fasti*, 205-208:

“Prospicit a templo summum brevis area circum:

Est ibi non parvae parva columna notae.

Hinc solet hasta manu, belli praenuntia, mitti,

In regem et gentes cum placet arma capi.”

Cf. Servius, *Ad Aen.* ix. 53 (preceding page, note 1).

² 1. 4: καὶ πρὸς τὸ Ἐννεῖον ἐλθόντες, πάντα τὰ προπολέμια κατὰ τὸ νομιζόμενον, διὰ τοῦ Καίσαρος, ὡς καὶ φητιαλίου, ἐποίησαν.

³ lxxi. 33.

⁴ Liv. xxi. 18.—Cf. Flor. ii. 6.

⁵ Aul. Gell. x. 27: “Q. Fabius imperator Romanus, dedit ad Carthaginienses epistolam. Ibi scriptum fuit populum Romanum misisse ad eos hastam et caduceum, signa duo belli aut pacis, ex quis, utrum vellent, eligerent; quod elegissent, id unum ut esse missum existimarent. . . . M. autem Varro non hastam ipsam neque ipsum caduceum missa dicit, sed duas tesserulas, in quarum altera caduceum, in altera hastae simulacra fuerint incisa.”

With the extension of Roman dominion and the acquisition of more and more distant territory, the fetial procedure gradually fell into desuetude. We find, indeed, the *pater patratus* still mentioned in the time of Claudius;¹ and other texts testify to the later existence of the college.² But all kinds of evasions were continually devised, so that the system had at length really become a mere shadow,³ and by the fourth century A.D. the entire institution disappeared. The growth of materialistic conceptions, the thirst for power and pleasure and riches, the decay of religion—all this was but a larger manifestation of the great falling away of the Romans from their earlier traditions.⁴

¹ Cf. Orelli, *Inscriptionum Latinarum* . . . 2276.

² Cf. Amm. Marcell. xix. 2. 4. ³ Lactantius, *Divin. inst.* vi. 9.

⁴ Cf. G. Boissier, *La religion romaine d'Auguste aux Antonins* (Paris, 1874), vol. i. p. 63.

CHAPTER XXVII

MEASURES SHORT OF WAR

IN ancient Greece there obtained certain practices, like *ἀνδροληψία* (*androlepsia*) and *σῦλαι*—corresponding to the modern reprisals and letters of marque—which were adopted as forcible measures for the exaction of justice, when it was held to have been refused without justification. The former was the more primitive remedy, and was substantially a regularized application of the ancient *ius talionis*. It fell into disuse at an early period, though without having been formally abrogated. The latter was always maintained in practice; but from time to time the proceedings relating thereto were regulated by municipal decrees or international conventions, which, indeed, sometimes even established in the case of certain communities or individuals complete immunity from such summary treatment.

Forcible
measures to
obtain justice.

*Androlepsia*¹ ('seizure of men,' a term derived from *Androlepsia*. *ἀνήρ*, *ἀνδρός*, a man, and *λαμβάνω*, *λήψομαι*, to take, to seize) was a special form of reprisal, or retaliation, applied in a drastic manner. If an Athenian citizen was considered to have been unjustly put to death in a foreign country, and if the government by whose subject and in whose jurisdiction the crime was committed allowed the murderer to go unpunished, and also refused his surrender, then the relatives of the victim were empowered by Athenian law to seize three citizens belonging to that State, and to hold them as

¹ Cf. E. Caillemer, in Daremberg-Saglio, *s.v.* *Androlepsia*.

hostages until restitution was made, or the murderer surrendered; and the possessions found upon their persons were confiscated. It appears that only such relatives were entitled to act as were capable of inheriting from the deceased,—ἐντὸς ἀνεψιότητος, that is, those of not more distant degree of relationship than that of second cousins.¹ The practice was also described as ἀνδρολήψιον; though it has been suggested that this term designated more strictly the *right* to adopt it, whilst ἀνδροληψία signified the *practice* itself.² The right was granted to the party entitled thereto, irrespectively of the murderer's nationality. If, however, after the commission of the crime he fled beyond the confines of Attic territory, it is doubtful whether the retaliatory measures could still be exercised, as flight under such circumstances constituted the offender an exile, and therefore operated, in a sense, as an expiation for the misdeed.³

It is not clear whether the measure was resorted to only when the victims were Athenian citizens, or also if they were isoteles, metoecs,⁴ or Athenian slaves. Certain writers hold that it was equally applicable;⁵ the grounds for this opinion are by no means conclusive, although (as has been shown in a previous chapter)⁶ these inferior classes of Athenian inhabitants, even when they journeyed abroad, received certain protection from the Athenian government. But to what extent the government was prepared to proceed on their behalf is not certain.

¹ Demosth. *c. Macart.* 57 (p. 1068).

² Cf. the opinion of Lipsius (note 411, p. 345, in Meier and Schömann's *Der attische Process*, Berlin, 1883-7), who agrees with such distinction as drawn by E. W. Weber (*Demosthenis Oratio in Aristocratem*, Jena, 1845, p. 298): "Vielmehr wird man mit Weber . . . so zu scheiden haben, dass ἀνδρολήψιον das Recht, ἀνδροληψία die diesem gemäss ausgeübte Handlung bezeichnet."

³ Pollux, viii. 51.

⁴ On the status of isoteles and metoecs in Athens, see vol. i. pp. 157 *seq.*

⁵ Cf. Weber, *op. cit.* pp. 297 *seq.*

⁶ See vol. i. p. 172.

According to the law as cited by Demosthenes, it would seem that androlepsia could be exercised on the territory of every alien community without distinction ; it is there stated that the practice applied to any people amongst whom the crime has been committed, *παρ' οἷς ἂν τὸ πάθος γένηται*.¹ Some modern writers, however, suggest a distinction. Thus Weber maintains that it was permissible only in the case of peoples bound to Athens by international compacts.² On the other hand, Meier holds (and, it must be said, with greater reason) that if such treaties existed between Athens and foreign States, there was in consequence an implied understanding—in the absence of explicit provisions—between them for dealing with criminals of the character in question, either by their condemnation by a local tribunal, or, more generally, by extradition ; and that if the foreign State refused to offer satisfaction in either of these ways, the existing treaty was thereby annulled, and androlepsia thus became applicable, as in the case of countries with which no convention had been concluded.³ Weber's view is, indeed, untenable ; for it is in direct antagonism to the entire practice of treaty-making and to the specific relationships established by conventions.

Where it could
be exercised.

¹ Demosth. *c. Aristocr.* 84.

² *Op. cit.* p. 298 : "Hac iudicii forma provisum erat, ne laesi iniuriam per vim ulciscerentur, neve in eos, qui laessissent, gravius consuleretur, eamque non nisi in iis populis assumtam puto, quibuscum foedere facto Atheniensibus commercium iuris praebendi et repetendi erat, ut ad τὰ σύμβολα περὶ τοῦ μὴ ἀδικεῖν pertinuisse videatur, quibus propria esset pacata iniuriarum compensatio."

³ M. H. E. Meier, *Opuscula academica* (Halis Saxonum, 1863), vol. ii. p. 189. In reference to Weber's opinion, Meier says he has not been able to find any good ground therefor : "Istius sententiae rationem nos quidem frustra quaesivimus" (p. 189). And he goes on to state a contrary view, which is undoubtedly the better one : "Immo, si quid videmus, ἀνδροληψία in eas tantum civitates dabatur, quibuscum nulla essent Atheniensibus σύμβολα ; quacum vero civitate intercederent Atheniensibus pactiones de iure inter utriusque civitatis, cives reddendo et accipiendo, in eam ne opus quidem erat ἀνδροληψία, sed si qui Atheniensium illa in civitate esset interfectus, licebat propinquis caesi ex ipsis foederibus ius repetere ; quod si negaretur, foedera violata ruptaque erant" (p. 189).

Whether
summary
measures were
adopted by
the captor.

After the seizure of the three fellow-countrymen of the homicide, it is very unlikely that Athenian law permitted the captor to adopt summary measures, or accorded him full liberty to treat them just as his anger and caprice might incite him. In all probability they were brought before the Athenian tribunals,¹ where sentence was pronounced according to the circumstances of the particular case. Pollux speaks of androlepsia as a special procedure ;² and elsewhere it is also described as a species of indictment, εἶδος ἐγκλήματος.³ Such description, however, is not unlikely incorrect, as the institution was undoubtedly part of the public law of Hellas. The exact nature of the proceedings and of the penalties imposed on the captured victims is not known. But there is no doubt that if the court found that the seizure was unjustifiable, damages were awarded to the individuals who had been illegitimately dragged before it, ἡ βουλή ποιῖται ζημίας ἐπιβολήν.⁴

Religious
basis.

This institution, apart from being a means of international self-help in view of a denial of justice, had a religious basis. Every murder, it was conceived, must be duly expiated ; otherwise (as M. Caillemer observes), the departed victim would ever pursue with his imprecations the impious relatives who neglected to avenge his death,—“ autrement la victime poursuivra de ses imprécations les parents impies qui négligent de la venger.”⁵ Hence, with the modification of the strict religious traditions, and the growth of scepticism fostered by philosophical speculations, the practice of androlepsia gradually fell into disuse.

¹ Cf. I. Bekker, *Anecdota Graeca*, 3 vols. (Berolini, 1814-21), vol. i. 213-214.

² Pollux, viii. 41, 50.

³ *Etymologicum magnum*.

⁴ Pollux, viii. 51.—Cf. Heffter, *Die athenäische Gerichtsverfassung* (Cöln, 1822), p. 429: “Er konnte unstreitig durch die δίκη βιαίωv [that is, action for forcible seizure] oder ähnliche Rechtsmittel zur Rechenschaft gezogen und zum Schadensersatz angehalten werden.”

⁵ In Daremberg-Saglio, *loc. cit.*

As to reprisal proper,¹ it may be said that the political Reprisal. character of the institution was well recognized in Greece. The commonest terms used to designate the practice are *σῦλαι*, or *σῦλα*, *ρύσια*, and *λάφυρον*; and some of the expressions used to indicate the exercise or authorization of the right are *σύλας δίδοναι*,² *σῦλα ποιείσθαι*,³ *ρύσια καταγγέλλειν*,⁴ *λάφυρον ἐπικρύπτειν*;⁵ sometimes the verb *ληίζομαι*⁶ (to despoil, to plunder) is used as an equivalent.

We find numerous examples of these proceedings in Examples in
Homer. Homer. Thus the Epeans having by their long and violent hostilities inflicted great losses on the Pylians, an expedition was made against the aggressors by Nestor, when his claims for restitution had been rejected; and numerous flocks were captured and shared amongst the sufferers. "And the heralds cried aloud, with the coming of the dawn, that all men should meet that had a debt owing to them in goodly Elis.⁷ And the men that were leaders of the Pylians gathered together and divided all. . . ."⁸ A similar expedition was made by Ulysses against the Messenians, who had carried off three hundred sheep together with their shepherds from Ithaca.⁹

In historic Greece the practice was frequently adopted. Examples in
historic Greece.

¹ See R. Dareste, *Droit de représailles chez les Grecs* (in *Nouvelles études d'histoire du droit*, Paris, 1902, pp. 305-321); C. Lécivain, *Le droit de se faire justice soi-même et les représailles dans les relations internationales de la Grèce* (in *Mémoires de l'Académie des sciences, inscriptions, et belles-lettres de Toulouse*. Neuvième Série. Tome ix. (1897), pp. 277-290).

² Demosth. *c. Lacrit.* 26. ³ Lysias, *c. Nicom.* 22. ⁴ Polyb. iv. 53. 2.

⁵ Polyb. iv. 26. 7. ⁶ Thuc. i. 5; v. 115.

⁷ Elis was founded by Eleus, the son of Epeus; hence Eleans and Epeans were two names of the same people.

⁸ *Iliad*, xi. 685-688:

κήρυκες δ' ἐλίγαινον ἄμ' ἡοῖ φαινομένηφιν,
τοὺς ἴμεν, οἷσι χρεῖος ὀφείλετ' ἐν Ἥλιδι δίγῃ·
οἳ δὲ συναγρόμενοι Πυλίων ἡγήτορες ἄνδρες
δαίτρενον.

⁹ *Odyss.* xxi. 17 *seq.*

Polychares, a Messenian, having been defrauded by Euaephus, a Spartan, with whom he had been associated for the purpose of breeding and exporting cattle, was denied justice in Sparta, even though his son had been killed by the latter; consequently he took possession of all he could lay hold of in Laconia, and murdered every Lacedaemonian he caught.¹ In 492 B.C. Cleomenes, king of Sparta, alleging that he had received an affront at the hands of the Aeginetans, exacted the surrender to him by the latter of ten of their principal citizens as hostages, who were afterwards put into the hands of the Athenians. On the death of the Lacedaemonian king, Aegina demanded the restoration of her citizens; but Athens refused to release them. Thereupon the offended State retaliated by capturing an Athenian sacred vessel, containing several Athenians who were on their way to Delos to attend the festival of Apollo.² In 416 B.C. an Athenian garrison in Pylos having committed depredations on the Lacedaemonians, the government of the latter, instead of renouncing the existing peace and commencing open hostilities, issued a proclamation authorizing their subjects to make reprisals on the Athenians.³ The Boeotians made reprisals on the Athenians because they were unable to obtain the discharge of a debt amounting to two talents.⁴ The Locrians having committed acts of depredation on a territory claimed by the Phocidians, the latter retorted by making reprisals on the pillagers.⁵ The Messenians retained an Aetolian am-

¹ Pausan. iv. 4. 8: ὡς δέ οἱ συνεχῶς ἰόντι ἐπὶ τὰς ἀρχὰς οὐδεμία ἐγένετο τιμωρία, ἐνταῦθα παρετράπη τε ὁ Πολυχάρης ἐκ τοῦ νοῦ καὶ τῷ θυμῷ χρώμενος, ἅτε ἔχων ἀφειδῶς ἤδη καὶ αὐτοῦ, πάντα τινὰ ὄν λάβοι Λακεδαιμονίων ἐτόλμα φονεύειν.

² Cf. Herodot. vi. 73, 86, 87.

³ Thuc. v. 115: καὶ οἱ ἐκ τῆς Πύλου Ἀθηναῖοι Λακεδαιμονίων πολλὴν λείαν ἔλαβον. καὶ Λακεδαιμόνιοι δι' αὐτὸ, τὰς μὲν σπονδὰς οὐδ' ὡς ἀφέντες, ἐπολέμουν αὐτοῖς, ἐκήρυξαν δὲ εἴ τις βούλεται παρὰ σφῶν Ἀθηναίους ληΐζεσθαι.—Cf. Xenoph. *Hell.* v. 1. 1.

⁴ Lysias, *c. Nicom.* 12.

⁵ Xen. *Hellen.* iii. 5. 3.

bassador, until his government effected a restitution of the property captured by its subjects, and a surrender of the culprits.¹ The Eleuthernians of Crete authorized the making of reprisals on the Rhodians, by way of avenging the death of fellow-citizens.² Demosthenes, in his condemnation of the trierarchs, points out how their depredatory acts rendered their fellow-citizens liable to reprisals, so that it was impossible for them to travel abroad without safe-conducts,—*μόνοις ὑμῖν οὐδαμόσε ἔστιν ἄνευ κηρυκείου βαδίσαι διὰ τὰς ὑπὸ τούτων ἀνδροληψίας καὶ σύλας κατεσκευασμένας.*³ It is again related by the Athenian orator that in the case of a contract respecting a maritime loan concluded between an Athenian and a Euboean, on the one part, and some sailors of Phaselis, in Lycia, on the other, it was stipulated that if a ship was delayed in the Hellespont, the cargo was to be landed at a place where it would be assured protection from reprisals. This refers to a place within the jurisdiction of a town with which Athens had already established a treaty renouncing the practice,—*ἐξελόμενοι ὅπου ἂν μὴ σύλαι ὥσιν Ἀθηναίους.*⁴ Thus the lenders, complaining of having been deprived of their property by the borrowers, said: “In our own city, without having done any wrong, without their having recovered any judgment against us, we have been robbed of our property by these Phaselites, as though reprisals had been given to them against Athenians.”⁵ This expression shows the recognition of the legitimate character of the measure when it was sanctioned by the proper authority.

In the period of Macedonian supremacy the practice was still frequent, but its unrestrained and indiscriminate adoption was generally prohibited. The custom

Restrictions
laid down.

¹ Polyb. iv. 4. 3.

² Polyb. iv. 53. 2.

³ Demosth. *De coron. praefect. nav.* 13.

⁴ Demosth. *c. Lacrit.* 13.

⁵ Demosth. *c. Lacrit.* 26: ἐν γὰρ τῇ πόλει τῇ ἡμετέρα αὐτῶν, οὐδὲν ἀδικούντες, οὐδὲ δίκην οὐδεμίαν, ὠφληκότες αὐτοῖς, σεσυλήμεθα τὰ ἡμέτερ' αὐτῶν, ὑπὸ τούτων Φασηλιτῶν ὄντων ὥσπερ δεδομένων συλῶν Φασηλίταις κατ' Ἀθηναίων.

had become established that aggrieved individuals should first set forth their claims to their respective governments, and obtain from them an express license to have recourse to the forcible measure, which served very often as a preliminary to commencing open war. Several cases are mentioned by Polybius. The people of Eleutherna, he says, suspecting that one of their citizens had been unjustly put to death by Polemocles, the Rhodian admiral (220 B.C.), in order to please the Cnossians, first proclaimed a right of reprisal against the Rhodians, and then began open hostilities against them,—*τὸ μὲν πρῶτον ῥύσια κατήγγειλαν τοῖς Ῥοδίοις, μετὰ δὲ ταῦτα πόλεμον ἐξήνεγκαν.*¹ Later, in 187 B.C., following the change of the political situation in Boeotia as a result of the treaty between Rome and Antiochus, the senate demanded that the Boeotians should recall Zeuxippus and other exiles. On their refusal, on the ground that they could not alter a just and legal sentence, the Roman government directed the Aetolians and Achaeans to restore him. Then Philopoemen, the Achaean strategus, granted a license to all who chose to make reprisals on Boeotian territory,—*ἀπέδωκε τοῖς αἰτουμένοις τὰ ῥύσια κατὰ τῶν Βοιωτῶν.*² Again, after Delos had been granted to Athens, and the Delians, in answer to an embassy to Rome, were ordered to leave the island and take their goods with them, they accordingly removed to Achaea, and became members of the Achaean league. They then desired to have their claims against the Athenians decided in accordance with the convention existing between the league and Athens. The latter, however, denying their right to plead under that agreement, the Delians applied (159 B.C.) to the league for a license to make reprisals on the Athenians,—*ἤτοῦντο ῥύσια τοὺς Ἀχαιοὺς οἱ Δῆλιοι κατὰ τῶν Ἀθηναίων,*³—thus recognizing that due authority for such a course had first to be obtained from the sovereign government.

¹ Polyb. iv. 53.² Polyb. xxii. 4.³ Polyb. xxxii. 17.

Thus it is clear that the practice of reprisals came to be established in Greece as a regularized juridical act, or legitimate international procedure for the purpose of enforcing certain obligations incumbent on a State, and for exacting compensation when justice could not be obtained by peaceful methods. It is therefore to be distinguished from privateering, as involving certain hostile acts in time of war, and from piracy and brigandage, as consisting in violent, irregular, unjustifiable proceedings which were always regarded as illegitimate, and of which the authors were held to be the enemies of mankind at large.¹

A regularized international procedure.

It is important to remember that very frequently reprisals were renounced, restricted, or otherwise regulated by express treaties between communities, or by special stipulations in commercial conventions. Sometimes personal immunity was conferred on certain individuals, either on account of their distinguished service, or owing to their being engaged in certain kinds of work, mainly at the direction of their own or of a foreign government. Such freedom from reprisals was designated *ἀσυλία*² (inviolability,—a, negative, *σύλη*, right of seizure), or *ἀσφάλεια*³ (safety, assurance from danger).

Regulation by treaties.

One of the most noteworthy treaties on this subject is that entered into about the middle of the fifth century B.C. between Oeantheia and Chalaëum,⁴ two Locrian towns. It is recorded in an inscription, engraved on a bronze tablet, which is now in the British Museum.⁵ The contracting parties mutually

Treaty between Oeantheia and Chalaëum.

¹ As to piracy, see *infra*, pp. 370 *seq.* ² Cf. vol. i. pp. 143, 145, 155, 355.

³ Cf. vol. i. pp. 145, 155.

⁴ Cf. vol. i. p. 194; *supra*, p. 70.

⁵ Hicks, 44; Michel, 3; Von Scala, 58; Rangabé, 356 b.—Cf. Dareste, *loc. cit.*; L. Ott, *Beiträge zur Kenntnis des griechischen Eides* (Leipzig, 1896), pp. 103-128.

The following are the provisions, of which the above gives the substance :

A.

Τὸν ξένον μὲ ἡγάγεν : ἐ τᾶς Χαλεΐδος : τὸν Οἰανθέα μ|εδὲ τὸν Χαλεΐα : ἐ τᾶς Οἰανθίδος : μεδὲ χρέματα αἴ τι συλδοι : τὸν δὲ

Jurisdiction.

engaged to refrain entirely from the practice within their territories or their ports, but not in the open sea. In the event of any illegitimate seizure, a fine of four drachmas was prescribed; and the captor was also obliged to restore the goods seized within a period of ten days. If such restitution was not thus effected, an additional penalty, by way of compensation, was imposed. Careful provision was made as to the jurisdiction over disputed claims that might arise. Different tribunals were to be set up according to circumstances. If the plaintiff was by birth an Oeantheian, but was resident in Chalaëum as a domiciled alien, *μέτοικος*, his action was to be heard by the ordinary courts of Chalaëum, of which the judges were appointed by lot from amongst the citizens; and he was to state his case through the medium of his proxenus. If, however, an Oeantheian plaintiff had not acquired the status of a metoec in Chalaëum, though resident there for the time being, his claim was to be brought before a body of special magistrates, *ξενοδίκαι*¹ (literally, judges in affairs between aliens), appointed at Chalaëum, of whom he was entitled to select nine or fifteen, according to the importance of the matter. Finally, should the action be brought by a citizen of Chalaëum, an odd number of judges were to be appointed by the

συλδοντα ἀνάτο(s) συλὲν τὰ ξενικὰ ἐ θαλάσας ἡγάγεν ; ἄσυλον ; πλὰν ἐ λιμένος ; τὸ κατὰ πόλιν ; Αἴ κ' ἀδίκο(s) συλδοῖ ; τέ||τορες δραχμαί : αἱ δὲ πλέον δέκ' ἀμαρῶν ἔχοι τὸ σῦλον ηε|μὸλιον ὀφλέτο, ὦτι συλάσαι ; Αἱ μεταφοικέοι πλέον μενὸς ἔ|ὸ Χαλειεὺς ἐν Οἰανθείαι ἔ Οἰανθεῖς ἐν Χαλείοι, τῶ ἐπιδαμίαι δίκαι χ|ρέστο ; Τὸν πρόξενον : αἱ ψευδέα προξενέοι : διπλ|είοι θοιέστο.

B.

Αἴ κ' ἀνδιχάζοντι τοῖ ξενοδίκαι : ἐπομότας ; ηελέσ|το ; ὁ ξένος : ὀπάγον : τὰν δίκαν : ἐχθὸς προξένο|καὶ Φιδίο ξένο : ἀριστίνδαν : ἐπὶ μὲν ταῖς μναια|αῖς : καὶ πλέον : πεντεκαίδεκ' ἄνδρας : ἐπὶ ταῖς || μειόνοις : ἐννέ' ἄνδρας : Αἴ κ' ὁ Φασστὸς ποῖ τὸν Φ|αστὸν δικάζεται κατὰς συνβολὰς : δαμοργὸς|ηελέσται : τὸς ἠορκομότας ἀριστίνδαν τὰν πε|ντορκίαν ὁμόσαντας : τὸς ἠορκομότας τὸν αὐτὸν|ἠορκον ὁμνίεν : πλεθὸν δὲ νικῆν.

¹ Cf. vol. i. pp. 193, 194, 209.

demiurgi, the regular magistrates, to constitute the tribunal. In every case the verdict of the majority of the judges was binding.

There are other interesting inscriptions in regard to the conferring of a like inviolability, such as, for example, the one recording the official note of the city of Allaria, in Crete, despatched to Paros¹ (second century B.C.); the rescript of king Seleucus of Syria, issued in favour of a town of Lydia² (second century B.C.); the decision of Athens on behalf of Aphytis, a Macedonian town;³ the resolution of the Cretan federal assembly in favour of Anaphe, an island in the south of the Aegean sea. In the latter case the privileges of *asylia* were conferred both on the city and its citizens :

Other instances.

ἄσυλον ἦμεν [Ἄνα]-
[φαίων] τὴν πόλιν κ[αί].....
..... αν καθὼς καὶ τὸ.....
..... [ὑπ]ἄρχει ἄσυλο[ν]...⁴

Penalties were to be inflicted on any Cretan subjects who violated these rights of the Anaphiotes, whether within or outside their territory :

Εἰ δὲ τίς τι [ἀφαι]-
[ρέ]σει Ἄναφαίων τῶν
..... ας ὀρμιομένων...
..... [τᾶ]ς πόλεως.....
..... ὑπόδικος ἔστω.....⁵

Offenders were to be prosecuted before the Cretan supreme court, *κοινοδίκιον*, which had special authority in questions arising out of the law of nations. Further, in reference to such immunities, we have the epigraphic document relating to the alliance of Ceos

Treaty between Ceos and the Aetolians.

¹ On a marble found in Crete; Michel, 47; *Corp. inscrip. Graec.* 2557.

² Michel, 48; *Bull. de corr. hellén.* vol. xi. (1887), pp. 81 seq.

³ *Corp. inscrip. Att.* i. 41.

⁴ *Bull. de corr. hellén.* vol. xvi. (1892), p. 144, ll. 12-15.

⁵ *Ibid.* ll. 17-21.

with the Aetolians, which was entered into about the beginning of the second century B.C. It provided that no Aetolian should, either by land or by sea, carry off Ceans into slavery, whether for an Amphictyonic grievance or for any other kind; and in return assured to the Aetolians citizenship in Ceos.¹

Treaties
between Teos
and several
other States.

Again, there is a very interesting series of texts² recording that the *asylia* of Teos was, as a result of diplomatic negotiations, specifically recognized and enforced in a large number of conventions entered into between, or decrees promulgated by, Rome, the Athamanes of Thessaly, the Delphians, the Aetolians, and some twenty Cretan towns (for example, Cnossus, Polyrrhenia, Rhaucus, Cydonia, Oaxus, Lappa, Hierapytna, Priansos, Aptaera, Allaria, Eleutherna, Apollonia, etc.). The Roman decree is probably of the year 193 B.C., and those of the Athamanes, the Delphians, and the Aetolians would seem to be of about the same date. As to the Cretan decrees, some belong to the same period, others were issued three or four decades later.

Of these inscriptions, the one setting forth the resolution of the Aetolians³ is particularly noteworthy, and may be mentioned as an illustration of the whole group. It states that the Teians having through their ambassadors, Pythagoras and Clitus, expressed a desire to renew the mutual ties of affection and amicable

¹ Michel, 27; Rangabé, 750 c; *Corp. inscrip. Graec.* 2350, 2352.—The following passage, embodying the provision as stated above, is taken from the text of Rangabé, ll. 5 seq.:

καὶ μη-
(δένα ἄ)γειν Αἰτωλῶν τοὺς Κείους μὴ
κατὰ γᾶν καὶ θάλατταν, μήτε ποτ' Ἀμ-
φικτιονικὸν μήτε ποτ' ἄλλο ἔγκλη-
μα μηθὲν. . .

² *Corp. inscrip. Graec.* 3046 seq.; P. Le Bas and W. H. Waddington, *Voyage archéologique* (Paris, 1870), tom. iii. pt. i. nos. 60-85; Michel, nos. 51-68; Egger, pp. 260 seq.

³ *Corp. inscrip. Graec.* 3046; Barbeyrac, *op. cit.* no. 402; Le Bas, *op. cit.* no. 85; Michel, 68; Egger, p. 280.

relationships, and having induced the Aetolians to recognize the inviolability of their town and territory, the latter have accordingly decided to maintain such feelings of amity, and to confirm the previous decrees conceding various privileges to the people of Teos. In pursuance of the ambassadors' representations, the Teian town and territory were to be held inviolable (ἀσφάλεια καὶ ἀσυλία—the usual formula) both by Aetolian citizens and by all other inhabitants of Aetolia; and the Teian subjects and other residents were to be free from all pillage and forcible measures of reprisal. Should any one amenable to Aetolian jurisdiction carry off any such protected inhabitants, or seize anything from their town or territory, then such persons or goods as were visibly in the possession of the captor (ἐμφανῆ) were to be restored 'in integrum' by the strategus and the annual councillors (οἱ σύνεδροι),—who in this matter possessed *ex officio* competence; but if they were concealed (ἀφανῆ),¹ and therefore not manifestly and immediately recoverable, an action was to be brought against the accused before the Aetolian courts, and the same procedure to be adopted as was provided in the law relating to the protection of the Dionysiac performers.²

¹ Thus Boeckh (*Corp. inscrip. Graec.* 3046, vol. ii. p. 633) distinguishes between the ἐμφανῆ, "*bona manifesta . . . quae actori erepta esse sponte pateat, apud synedros magistratus sine iudicio repetere posse actorem,*" and the ἀφανῆ, "*latentia vero eo genere actionis eaque via esse probanda et vindicanda, quae concessa sit artificibus Dionysiis.*"

² The following portion of the epigraph (ll. 8-17 as arranged in Michel, no. 68) presents the main provisions as given in the above text:

ὑπάρχειν δὲ αὐτοῖς παρὰ τῶν Αἰτωλῶν τᾶς τε πόλιος καὶ τᾶς |
 χώρας τὰν ἀνιέρωσιν καὶ ἀσυλίαν, καθὼς καὶ οἱ πρεσβευταὶ ἀξίουν,
 καὶ μηθένα Αἰτωλῶν μηδὲ || τῶν ἐν Αἰτωλίαι κατοικούντων ἄγειν τοὺς
 Τηΐους μηδὲ τοὺς ἐν Τέωι κατοικέοντας μηδαμόθεν | ὀρρωμένους, ἀλλὰ
 τὰν ἀσφάλειαν καὶ ἀσυλίαν εἶμεν αὐτοῖς τὰ ἀπ' Αἰτωλῶν καὶ τῶν ἐν
 Αἰ|τωλίαι κατοικούντων. Εἰ δὲ τίς κα ἄγχι ἢ αὐτοὺς ἢ τὰ ἐκ τᾶς
 πόλιος ἢ χώρας, τὰ μὲν ἐμ|φανῆ ἀναπράσσειν τὸν σ[τρ]ατα[γὸν]
 καὶ τοὺς συνέδρους αἰεὶ τοὺς ἐνάρχους, τῶν δὲ ἀφανῶν ὑποδίκους

In other cases we find treaties establishing a different kind of jurisdiction with regard to disputes relating to captures ; as, for example, a reference to a third city, ἔκκλητος πόλις,¹ acting as a court of arbitration ; or investigation by a common tribunal, κοινὸν δικαστήριον,² consisting of an equal number of judges chosen from each of the States concerned, as in the alliance between Hierapytna and Priansos.³

Special
exemptions
from reprisals.

Exemptions from reprisals were frequently allowed in the case of proxenoi who had done good service, and dramatic performers, and other functionaries of a like nature. Thus by decrees of the Amphictyons in 278 B.C. and in 130 B.C. this privilege of ἀσυλία (a term often associated in the original texts with ἀτέλεια, which sometimes implies immunity from public burdens, and sometimes is used to strengthen the significance of ἀσυλία) was conferred on actors resident in Athens. Neither in time of peace nor in time of war were they to be seized, unless they were public debtors, or unless there was a mutual agreement to the contrary.⁴ An Aetolian decree of the beginning of the second century B.C. conceded the like inviolability to all those who proceeded to Pergamus, with a view to taking part in the solemn games instituted by king Eumenes in honour of Athena Nicephorus.⁵ Both Aetolian citizens and aliens domiciled in Aetolia were to observe this decree ; and those who offended in contravention of it were to be prosecuted before the Aetolian συνέδροι,

εἶμεν τοὺς ἀχνηκότας, γινομένας τοῖς Τηίοις τᾶς ἐγδικάσιος || καὶ τᾶς λοιπᾶς οἰκονομίας, καθὼς καὶ τοῖς Διονυσιακοῖς τεχνίταις ὁ νόμος τῶν Αἰτωλῶν κελεύει.

¹ Cf. vol. i. pp. 140, 203, 207 ; *supra*, pp. 22, 64, 71.

² Cf. vol. i. p. 207 ; *supra*, p. 63.

³ See vol. i. p. 207 ; *supra*, pp. 63 *seq.*

⁴ Michel, 1009 ; Egger, pp. 287 *seq.* ; *Corp. inscrip. Att.* ii. 551.

⁵ Michel, 291 ; Dittenberger, 215 ; P. Haussoullier, in *Bull. de corr. hell.* v. (1881), 372-383, where a French translation of the elaborate document is given.

commissioners or councillors, by the injured party, or, failing him, by any other individual who cared to do so.¹

A similar immunity was extended to contractors of public works and their employees. There was usually a provision to this effect in international conventions, as in the case of an agreement relating to the execution of repairs in the Delian temple.² An interesting example is found in the contract between the town of Eretria in Euboea, and one Chaerephanes, a contractor, for the draining of a marsh. It was agreed that during the carrying out of the work undertaken for the town, Chaerephanes and his workmen should be protected from reprisals both on land and sea, in time of war and in time of peace; and that if a third party claimed a right of reprisal against the said town, he was entitled to exercise it against the workmen, but not before they had fulfilled their obligations imposed by the contract.³

Violations of these special privileges were punished by fine; and the offender was, moreover, obliged to liberate the person seized and restore his goods.

¹ *Bull. de corr. hellén.*, *ibid.*, ll. 20-21 :

..... εἰ δὲ τίς κα ἄγη ἢ ῥυσιάξῃ ἢ ἀποβιάξαιτο
ἢ διεγγνάσῃ, ὑπόδικον εἶμεν ἐν τοῖ[s]
σύνεδρ[ο]ις τῶι ἀδίκηθέντι καὶ ἄλλω τῶι θέλοντι ἐν ταῖς ἐκ
ποτιστάσιος δίκαις.

(The word *ποτίστῆσις* is a dialectical form of *προστασία* (authority, protection), implying the same right of action as the *prostates* had in connection with metoecus.—Cf. vol. i. pp. 162 *seq.*)

² Cf. *Corp. inscrip. Graec.* ii. 2266.

³ Dareste, Haussoullier, and Reinach, *Recueil des inscriptions juridiques grecques* (Paris, 1891), t. i. p. 143 :

..... Εἶναι
αὐτῶι ἀσυλίαν ἐργαζομένωι τὰ πρὸς τὴν πόλιν καὶ κατὰ γ[ῆ]ν καὶ
κατὰ
θάλασσαν καὶ πολέμου καὶ εἰρήνη-
s] καὶ αὐτῶι καὶ τοῖς μετὰ Χαιρεφάνου ἐργαζομένοις ἄπα[σιν]. Ἐχει
δὲ πάντας ἀσυλίαν Χαιρεφάνει τὴν
αὐτ[ὴ]ν τοῖς συνεργαζομένοις αἰεὶ, πλὴν εἴ τις σῦλον κατὰ τῆς πόλεως
ἔχει· τούτω[ι δὲ μὴ ἐξείναι συλῶν τοὺς με-
τὰ] Χαιρεφάνου πρὶν ἂν διαλύσωνται πρὸς τὴν πόλιν πάντ[α].....

Proceedings could be instituted not only by the alien victim himself, but by any other individual on the ground that the offence was of a public character.

Reprisals in Italy.

The practice of reprisals obtained in Italy as in Greece. The *manus iniectio* (the 'laying on of hands,' an act by which a person took possession of a thing belonging to him without a judicial decision) and the *pignoris capio* (a form of distress)¹ of Roman private law no doubt had their counterparts in international affairs. The *vindiciae*² (laying claim to a thing and taking possession of it) of the Twelve Tables appears to have been somewhat analogous to the *σῦλαι* of the Hellenic law of nations; and a penalty was similarly inflicted for illegal seizure.³

We find in Rome a permanent court of inquiry, namely, that of the recuperators,⁴ for investigating, among other matters, alleged grievances arising out of seizures of property; and we have already considered the functions of the fetials in making formal demands for restitution when injuries of this kind had been inflicted on Roman subjects.⁵

Treaty between Rome and Carthage.

In early times Rome, like the Greek States, entered into treaties for the purpose of regulating the practice. Thus in the second treaty between Rome and Carthage (306 B.C.), it was expressly laid down that forcible measures of this kind were not to be adopted; that any act of violence committed in the territory of either party against subjects of the other should be considered a public offence and dealt with accordingly, —a provision which thus prohibited retaliation of the same kind. "If a Roman take water or provisions from any district within the jurisdiction of Carthage, he shall not injure, while so doing, any between whom and Carthage there is peace and friendship. Neither

¹ See *supra*, p. 200.

² See *supra*, p. 320.

³ Cf. Festus, *s.v.* *Vindiciae*: "Si vindiciam falsam tulit si velit . . . duplione damnum decedito."

⁴ See *supra*, pp. 83 *seq.*

⁵ See *supra*, pp. 329 *seq.*

shall a Carthaginian in like case. If any one shall do so, he shall not be punished by private vengeance, but such action shall be a public misdemeanour."¹

The practice of reprisals continued till the later periods of the Empire. Occasionally we find prohibitions in imperial constitutions. Thus Honorius and Theodosius wrote in 422 A.D. to the praetorian prefect disapproving of the seizure of an individual's goods for another's debts, whether public or private.² Some fifty years later Zeno wrote to the same effect, and emphasized that molesting others, under such circumstances, was not only contrary to the law, but antagonistic to all natural equity.³ Finally, in 537 A.D. there is a novel of Justinian⁴ which refers to the extreme abuse of seizures, made in violation of prohibitive laws, and

Prohibition
under the
Empire.

¹ Polyb. iii. 24: ἄν ἕκ τινος χώρας ἦς Καρχηδόνιοι ἐπάρχουσιν, ὕδωρ ἢ ἐφοδία λάβῃ ὁ Ῥωμαῖος, μετὰ τούτων τῶν ἐφοδίων μὴ ἀδικεῖτο μηδένα πρὸς οὐδὲ εἰρήνη καὶ φιλία ἐστὶ Καρχηδονίους. ὡσαύτως δὲ μηδ' ὁ Καρχηδόνιος ποιεῖτο. εἰ δέ, μὴ ἰδίᾳ μεταπορευέσθω· ἐὰν δέ τις τοῦτο ποιήσῃ, δημόσιον γινέσθω τὸ ἀδίκημα.

² *Cod. Just.* xii. 60. 4: "Nullam possessionem alterius pro alienis debitis publicis sive privatis praecipimus conveniri."

³ *Cod. Just.* xi. 57: "Grave est et non solum legibus, verum etiam aequitati naturali contrarium, pro alienis debitis alios molestari. idcirco huiusmodi iniquitates contra omnes vicinos perpetrari modis omnibus prohibemus."

⁴ *Just. Nov.* lii. 1: "Propterea sancimus nullam omnino pignorationem in nostra republica praevalere, neque in mercatis (hoc quod maxime ibi praesumptum invenimus) neque in agris neque in civitatibus neque in vicis, neque in civibus neque in vicaneis neque in agricolis neque alio omnium quocumque modo vel tempore, sed praesumentem alium pro alio secundum pignorationis formam aurum aut aliquid aliud exigere, hoc reddere in quadruplum violentiam passo, et cadere etiam actione quam habuit adversus eum pro quo exactionem fecit. Non enim habet rationem alium quidem esse debitorem alium vero exigi, sed nec alteri molestum esse pro altero quodam tamquam invasionem aut iniuriam committente, et alium quasi vicaneum existentem caedi aut iniuriam sustinere et aliquid pati quod omnino non competit pro alio, et absque legitima occasione quamlibet perferre calumniam, et supplicia sustinere in corpore a praesidibus gentium: scientibus quia, si non hoc egerint, sed in provincia cui praesunt pignorationes praesumantur nihil erit tale quod eos a nostris eripiat manibus."

even at public feasts and assemblies, animadvert on the unjustifiable proceeding of laying hold of a man and carrying him off as compensation for another, simply because he happens to be a fellow-countryman, and lays down that future offenders are liable to corporal punishment, as well as to the loss of their actions.

CHAPTER XXVIII

SOME QUESTIONS OF MARITIME LAW

THE maritime navigation of the races of antiquity was no doubt governed by customs and written laws, of which, however, in the case of many of these peoples, such as the Assyrians, the Phoenicians, Carthaginians, and others, we know very little that is of a definite and documentary character. As to the Babylonian empire, there are certain tables containing provisions in regard to the contract of affreightment, and the navigation of the river Euphrates.¹ In the case of ancient Egypt² there are somewhat fuller records which show, comparatively speaking, remarkable progress in the regulation of maritime practices. Herodotus refers to the great privileges granted to merchants by Naucratis, a city in the Nile delta, and says that if any one arrived at any other mouth of the Nile he was obliged to take an oath that he had come there against his will, and then sail in the same vessel to the Canopic mouth; but if stress of weather prevented his doing so, he was compelled to unload his cargo and convey it in barges round the delta and land it at Naucratis.³ Amasis

Laws and customs as to ancient maritime navigation.

¹ Cf. E. Revillout, *Les obligations en droit égyptien* (Paris, 1886), and the same author's *La création et le droit commercial dans l'antiquité* (Paris, 1897).

² Cf. Revillout, *op. cit.*; G. Maspéro, *Histoire ancienne des peuples de l'Orient* (Paris, 1904), c. xii.

³ Herodot. ii. 179: Ἦν δὲ τοπαλαῖον μούνη ἢ Ναύκρατις ἐμπόριον, καὶ ἄλλο οὐδὲν Αἰγύπτου. εἰ δέ τις ἐς τῶν τι ἄλλο στομάτων τοῦ Νείλου ἀπίκοιτο, χρῆν ὁμόσαι, μὴ μὲν ἐκόντα ἐλθεῖν ἀπομόσαντα

allowed Greeks coming to Egypt to dwell in the latter city ; and to those who did not wish to establish themselves there, but landed only for purposes of maritime trade, he granted places where they might erect altars and temples to their gods.¹ As to India, we find in the ancient code of *Manou* certain laws regulating maritime commerce. And in the case of the Hebrews, there were provisions in the *Mishna*, a supplement and elaboration of the Mosaic law, as codified by Rabbi Jehudah, a century after the Roman conquest.²

Similarly in Greece and Rome there was a considerable body of regulations relating to maritime practices, both in war and in peace. The Greeks, unlike the Romans, ever manifested a great affection for the sea, and a desire for distant voyages and exploits. Typical of this national love is the sentiment expressed in an epitaph on a grave of some Greek exiles in Persia. 'We who once left the deep roaring waves of the Aegean lie here in the heart of Ecbatana's plain . . ., farewell, thou beloved sea!'—*χαῖρε, θάλασσα φίλη*. And Prometheus in that supremely beautiful Aeschylean phrase speaks of 'the multitudinous laughter of the ocean waves,'

. . . ποντίων τε κυμάτων
ἀνήριθμον γέλασμα. . . .³

Maritime navigation and commerce were at an early epoch in a high state of development amongst the Greeks. On the other hand, the Romans never felt so favourably disposed towards maritime ventures and commercial transactions in general, and looked with

δὲ, τῇ νηϊ αὐτῇ πλέειν ἐς τὸ Κανωβικόν· ἢ εἰ μὴ γε οἶα τε εἷη πρὸς ἀνέμους ἀντίους πλέειν, τὰ φορτία ἔδεε περιάγειν ἐν βάρισι περὶ τὸ Δέλτα μέχρι οὐ ἀπίκοιτο ἐς Ναύκρατιν.—Cf. Diod. Sic. i. 67.

¹ Herod. ii. 178 : Φιλέλλην δὲ γενόμενος ὁ Ἀμασις, ἄλλα τε ἐς Ἑλλήνων μετεξετέρους ἀπεδέξατο, καὶ δὴ καὶ τοῖσι ἀπικνευμένοισι ἐς Αἴγυπτον ἔδωκε Ναύκρατιν πόλιν ἐνοικῆσαι.

² Cf. R. Dareste, in *Journal des Savants* (Paris, July, 1884).

³ Aeschyl. *Prom. Vinc.* 89-90.

Greek love of
the sea.

The Romans
averse from
trade.

contempt on retail trading.¹ Dionysius relates that Numa appointed slaves and foreigners to exercise those trades that were sedentary and mechanical, regarding them as corrupters and destroyers of body and mind; and for a long time such occupations were deemed ignominious by the Romans, and exercised by none of them.² Sallust places artisans on a level with slaves.³ Apart from the military profession, agricultural pursuits were alone held in honour; as Pliny remarks, they alone deserved the attention of the community, and the solicitude of legislators.⁴ Such strict views, however, had necessarily to be modified owing to the exigencies of daily life; and so we find, even in the earliest times, corporations of workmen and tradesmen in Rome.⁵ Later, under the Empire, with the extension of dominion and absorption of other lands and peoples, commerce increased, and was especially fostered by the growing luxury and desire for wealth.⁶ But at all times the Romans regarded the sea with horror. Terence makes a character say that one who has not been to sea cannot realize the dangers one has escaped—

Roman horror
of the sea.

‘O fortunate! nescis quid mali
praeterieris, qui nunquam es ingressus mare.’⁷

Even at the end of the Republic they were loth to trust themselves to the open sea. The ocean was

¹ Cf. Cic. *De off.* i. 42: “mercatura autem, si tenuis est, sordida putanda est...”; and *De leg. agrar.* 35.

² Dion. Hal. ii. 28: ἐπιδιφρίους μὲν καὶ βαναύσους καὶ προσαγωγούς ἐπιθυμιῶν αἰσχυρῶν τέχνας, ὡς ἀφανιζούσας καὶ λυμαιομένας τὰ τε σώματα καὶ τὰς ψυχὰς τῶν μεταχειριζομένων, δούλοις καὶ ξένοις ἀπέδωκε μεθοδεύειν καὶ διέμεινεν ἕως πολλοῦ πάνυ χρόνου δι’ αἰσχύνης ὄντα Ῥωμαίοις τὰ τοιαῦτ’ ἔργα καὶ ὑπ’ οὐδενὸς τῶν αὐθιγενῶν ἐπιτηδεύόμενα.—Cf. Liv. xxi. 63; Cic. *Verrin.* v. 8; *Dig.* l. 5. 3.

³ *Catil.* 50.

⁴ *Hist. nat.* xviii. 3.—Cf. Cato, *De re rustica, prooem.*

⁵ Cf. Plut. *Numa*, 28; Plin. *Hist. nat.* xxxiv. 1; Liv. ii. 27.

⁶ Cf. Plin. *Hist. nat.* vi. 26 (25); Val. Flacc. *Argonaut.* i. 246 seq.; Seneca, *Epist.* 87.

⁷ *Hecyra*, iii. 4, 4-5.

generally regarded by them, not so much as a means of communication, and a connecting link between the different and most distant countries of the globe, but rather as an insurmountable barrier; and so, to navigate it was usually thought to be an offence against the gods.¹

Piracy in
Greece.

As in the case of all ancient maritime communities, piracy was prevalent amongst most of the Hellenic peoples, especially so in their earlier history. In the Homeric age the practice was looked upon as a creditable, indeed glorious, means of enrichment.² Thucydides relates that in ancient times amongst Hellenes and barbarians alike, dwellers along the coast, and notably the islanders (who were mostly of Carian or Phoenician origin³), when they began to find their way to one another by sea, had recourse to piracy,—*ἐτράποντο πρὸς ληστείαν*.⁴ At their head were powerful chiefs, who adopted this method of increasing their wealth and providing for their poorer followers. They usually directed their attacks against unwalled or straggling towns and villages and plundered them; for, he says, such an occupation was then held to be honourable, and not at all disgraceful,—*οὐκ ἔχοντός πω αἰσχύνην τούτου τοῦ ἔργου, φέροντος δέ τι καὶ δόξης μᾶλλον*.⁵ He mentions that in his time there were parts of Hellas where the old practices still continued, as, for example, among the Ozolian Locrians, Aetolians, Acarnanians, and the adjacent regions of the continent; and these peoples gloried in their piratical exploits.⁶ Hence, as a protection against these marauders, towns were at first

¹ Cf. Lucret. v. 1002-1004 :

“Nec poterat quemquam placidi pellacia Ponti
Subdola pellicere in fraudem ridentibus undis :
Improba navigii ratio tum caeca iacebat.”

Cf. also Hor. *Carm.* i. 3; Virg. *Bucol.* iv. 31; and numerous other passages in the Roman poets.

² Cf. *Iliad*, i. 367; vi. 58; ix. 588; xxii. 64; *Odys.* xv. 385, 426; xvii. 425; etc.

³ Thuc. i. 8.

⁴ Thuc. i. 5.

⁵ *Ibid.*

⁶ *Ibid.*—Cf. Plut. *Pomp.* 24.

built back from the sea, and fortified.¹ In the time of Solon, the Phocians, owing to the sterility of their land, resorted to depredations on the high seas.² It would appear that according to the laws of this legislator, associations of freebooters were allowed to be formed for the purpose of going on predatory expeditions, as well as for carrying on commercial transactions,—“*qui ad praedam negotiationemve proficiscuntur.*”³

Bands of pirates were sometimes engaged as mercenaries. Thus, as Herodotus reports, Psammitichus, reinforced by some Carian and Ionian pirates who had landed in Egypt through stress of weather, overcame the rival kings, and made himself master of all Egypt.⁴ Euripidas, an Aetolian, employed pirates as mercenaries (218 B.C.),—*μετὰ τῶν πειρατῶν καὶ μισθοφόρων. . .*⁵ Polyxenidas, the commander of the fleet of Antiochus, entered into an alliance with Nicander, a pirate chief, ‘archipirata,’ who contributed five decked ships, 190 B.C.⁶ Demetrius, in the war against Rhodes, had pirates in his service.⁷

In early Italy, likewise, piracy and brigandage prevailed largely. Through these practices, the Etruscans for a time acquired maritime ascendancy, just as Crete, Rhodes, Greece, and Carthage had done in their turn. The Etruscans did not, however, confine themselves exclusively to such nefarious proceedings. They enjoyed a favourable position for trading operations, commanding the most important ports and routes, and they controlled the chief articles of Italian export, namely iron, copper, silver, amber. Under the protection of their privateering, which (as Mommsen

¹ Thuc. i. 7.

² Justin. xliii. 3 : “Plerumque etiam latrocinio maris, quod illis temporibus gloriae habebatur, vitam tolerabant.”

³ Gaius, *Ad XII. Tab.* in *Dig.* xlvii. 22 (de collegiis et corporibus), 4 : . . . ἢ ἐπὶ λείαν οἰχόμενοι ἢ εἰς ἐμπορίαν.

⁴ Herodot. ii. 152.

⁵ Polyb. iv. 68.

⁶ Liv. xxxvii. 11.

⁷ Diod. xx. 97 : . . . ἐπεφάνη παραδόξως πειραταῖς τισιν ἀπεισταλμένοις ὑπὸ Δημητρίου.

observes) constituted a kind of rude navigation act—“gleichsam einer rohen Navigationsakte,”¹—their commerce could not but flourish. With the loss of their maritime sovereignty, their commercial prosperity rapidly declined. The north of the Tyrrhenian sea was, even to a late epoch, infested with Ligurian pirates.² In 394 B.C. a *longa navis* (said usually of a man-of-war), laden with valuable cargo, whilst proceeding to Delphi was captured by Liparaean pirates.³ In the second Samnite war, depredations were frequently committed by the Samnites on the coast of Latium.⁴ In 338 B.C. Antium, a naval power, which had for some time harassed what little trade the Romans then had, was conquered.⁵

Measures
against pirates.

From time to time, however, provision was made for checking brigandage and all pillaging excursions. Thucydides states that, according to tradition, the first ruler who possessed a navy was Minos, king of Crete. Having conquered the Cyclades (the group of islands surrounding Delos in the Aegean sea) and acquired the sovereignty over the Hellenic sea, he did all he could to clear the sea of pirates.⁶ At a very early time Corinth possessed a fleet, and was able to protect her commerce, and put down piracy,—*τὰς ναῦς κτησάμενοι τὸ ληστικὸν καθήρουν. . .*⁷ The Athenians had commenced also at an early epoch to adopt various measures for policing the seas.⁸ The Dolopes (a people of Thessaly), who lived by piracy, *ληιζόμενοι δὲ τὴν θάλασσαν*, had plundered strangers who entered their ports, and robbed and imprisoned some Thessalian merchants

¹ *Röm. Gesch.* vol. i. p. 140.

² Strabo, iv. 1. 6; Diod. iv. 60; v. 39.

³ Strabo, v. 3. 5.—Cf. Liv. v. 28. ⁴ Strabo, v. 3. ⁵ Liv. viii. 14.

⁶ Thuc. i. 4: *Μίνως γὰρ παλαιάτατος ὢν ἀκοῇ ἴσμεν ναυτικὸν ἐκτίησάτο, καὶ τῆς νῦν Ἑλληνικῆς θαλάσσης ἐπὶ πλείστον ἐκράτησε, καὶ τῶν Κυκλάδων νήσων ἤρξέ τε καὶ οἰκιστὴς πρώτος τῶν πλείστων ἐγένετο, Κῆρας ἐξέλασας καὶ τοὺς ἑαυτοῦ παῖδας ἡγεμόνας ἐγκαταστήσας.*

⁷ Thuc. i. 13.

⁸ Plut. *Cimon*, 8.

whose ships were anchored at Ctesium. The merchants having escaped from prison laid a complaint against the people of Scyros before the Amphictyonic Council. A fine was imposed, but they refused to pay it, saying that only those who shared the plunder were liable. Accordingly Cimon made himself master of Scyros, and expelled the Dolopes.¹ Convoys, as a means of defence, were not uncommon. The Rhodians achieved great success in their determined policy to rid the seas of piratical adventurers, and thus considerably increased their maritime power.² International conventions were frequently established containing express stipulations against piracy and other forcible seizures of men and property. Thus, there was the treaty between Oeantheia and Chalaëum, and that between Ceos and the Aetolians, which have already been considered ;³ and in the Teian inscriptions, we find the text of a legislative act, ending with imprecations against disobedient citizens, compounders of poisons, against magistrates neglecting their duty, or guilty of treasonable practices, and also against pirates and brigands.⁴

For a long time Rome was obliged to submit patiently to the piratical exploits of foreign peoples. Such reluctant toleration had, no doubt, been closely connected with her deep-rooted aversion from maritime war, and her lack of an efficient marine. But when the rulers of Scodra (in Dalmatia) had united with the Illyrian tribes for the purpose of conducting joint expeditions on a large scale, the Roman government found this condition of things intolerable, and, in spite of itself, was compelled to abandon its passive

Roman efforts
to put down
piracy.

¹ Plut. *Cimon*, 8.

² Cf. E. Cauchy, *Droit maritime international* (Paris, 1862), vol. i. p. 152 : “. . . Les nations les plus renommées pour la justice de leurs lois nautiques furent celles qui s’employèrent avec le plus de zèle à extirper cette plaie de la navigation maritime. Les Rhodiens, notamment, méritèrent cet éloge dans l’antiquité.”

³ See *supra*, pp. 70-71.

⁴ Hicks, 23 ; Michel, 1318 ; *Corp. inscrip. Graec.* 3044.

attitude in these matters. Two ambassadors were first despatched to Scodra, to demand that Teuta, the queen of Illyricum, should put a stop to these practices; whereupon she replied that piracy was a legitimate occupation according to the common law of the Illyrians, and that her government could not interfere with freebooting.¹ One of the envoys, Lucius Coruncanius, retorted that in that case the Romans would make it their business to introduce better law among the Illyrians.² On their way home both ambassadors were murdered by the orders of the queen, who, as Polybius says, thus set at naught the law of nations, ὀλιγωρήσασα τῶν παρ' ἀνθρώποις ὠρισμένων δικαίων.³ The surrender of the assassins having been subsequently refused, Rome decided on war, made an expedition against Scodra, 228 B.C., destroyed the piratical strongholds, compelled the country to accept her terms, and thus asserted her maritime supremacy in the Adriatic.⁴

Apart from her own repressive efforts, Rome sometimes entered into conventions for the suppression of sea-robbery, as well as for the restriction of reprisals, as, for example, in the treaty with Carthage which has already been referred to.⁵

Further measures were taken at a later epoch, when bands of pirates had associated together in Cilicia,⁶ and the neighbouring islands, and harassed the Italian coasts. The efforts of Caesar and Pompey were for a time successful. Under the Empire, more vigorous steps were adopted; and maritime brigandage was largely

¹ Polyb. ii. 8 : κοινῇ μὲν, ἔφη, πειρᾶσθαι φροντίζειν, ἵνα μηδὲν ἀδίκημα γίγνηται Ῥωμαίοις ἐξ Ἰλλυριῶν· ἰδίᾳ γε μὴν, οὐ νόμιμον εἶναι τοῖς βασιλεῦσι κωλύειν Ἰλλυριοὺς τῆς κατὰ θάλατταν ὠφελείας.

² *Ibid.* : πειρασόμεθα δὲ, θεοῦ βουλομένον, ἐφετῶς καὶ ταχέως ἀναγκάσαι σε, τὰ βασιλικά νόμιμα διορθώσασθαι πρὸς Ἰλλυριοὺς.

³ *Ibid.*

⁴ Cf. G. Zippel, *Die römische Herrschaft in Illyrien* (Leipzig, 1887), pp. 46 *seq.*

⁵ *Supra*, p. 76.

⁶ Cf. Plut. *Sertor.* 7.

put down by a strong administrative organization, and effective policing arrangements.

Both in Greece and in Rome pirates, no matter how large their bands, and how organized they were, were not regarded as 'regular enemies,' *iusti hostes*, but as enemies of mankind generally; so that the usual formalities relating to the commencement of war, and the mitigations conceded in the case of other belligerents, were held not to be applicable to them. Thus the *Digest* specifically lays down that only those are considered *hostes*, against whom the Roman people have publicly decreed and declared war, or who have themselves proclaimed it against Rome in a similar manner; and that all others against whom the Romans directed their arms fall in the category of brigands and plunderers,—“*hostes sunt, quibus bellum publice populus Romanus decrevit vel ipsi populo Romano: ceteri latrunculi vel praedones appellantur.*”¹ As to Greece, it would appear from a passage in Demosthenes that in regard to the question of recapture from pirates, rules very much similar to those applied in modern times were in force. Thus Philip claimed the island of Halonnesus on the ground that he had captured it from pirates, who had, indeed, taken possession of it when it belonged to Athens. Whereupon Demosthenes challenged the pretension of the Macedonian king, and urged that it rested on fallacious grounds; for pirates seizing places wrongfully, and fortifying themselves therein, conduct their expeditions to harass other people, and one who has vanquished and chastised them cannot urge with reason that what they robbed the owners of becomes his property.²

¹ *Dig.* xlix. 15. 24.

² Demosth. *De Halonneso*, 2: τοῦτον δὲ τὸν λόγον, ὡς οὐκ ἔστι δίκαιος, οὐ χαλεπὸν ἔστιν αὐτοῦ ἀφελῆσθαι. ἅπαντες γὰρ οἱ λησταὶ τοὺς ἀλλοτρίους τόπους καταλαμβάνοντες καὶ τούτους ἐχυροὺς ποιοῦμενοι ἐντεῦθεν τοὺς ἄλλους κακῶς ποιοῦσιν. ὁ δὲ τοὺς ληστὰς τιμωρησάμενος καὶ κρατήσας οὐκ ἂν δήπου εἰκότα λέγοι, εἰ φαίη, ἂ ἐκείνῳ ἀδίκως καὶ ἀλλότρια εἶχον, ταῦθ' ἑαυτοῦ γίγνεσθαι.

Apart from questions relating to piracy, and the conventional regulation of reprisals, there were certain other elements of maritime law recognized in Greece.

Treatment
of the
shipwrecked.

When piratical depredations became less rampant, and commercial intercourse proceeded more regularly and peacefully, merchants received a greater welcome when they landed on the coasts of foreign countries; and it was generally recognized that shipwrecked mariners and traders should, above all, be treated with humanity and consideration. The usual principles of hospitality and mercy to helpless travellers were extended in such cases. Hence, they were allowed to gather together their possessions and depart unmolested. Carthage was, in this respect, frequently accused, especially by Roman writers, of being inhospitable and cruel, and of preventing the subjects of rival powers from landing on her shores. Thus Strabo defending the Egyptians against the reports of their *ξενηλασία*, adoption of hostile measures towards aliens, points out that the Carthaginians sank pitilessly every foreign vessel they found navigating within their latitudes.¹ But this statement is, in all probability, greatly exaggerated; for the Carthaginian commerce could never have prospered as it did if proceedings of this kind had been customarily adopted.

Maritime
sovereignty.

Property in the sea was considered possible, not merely in the territorial waters, but in regions extending far beyond these limits. The maritime ascendancy of this or that conquering nation was not regarded from a merely comparative point of view as to the predominance of interests, but was asserted and exercised rather in the sense of absolute proprietorship. Herodotus refers to Minos the Cnossian as having obtained the empire of the sea, *ὅς θαλασσοκρατέειν ἐπενοίθη . . .*,² and says that Polycrates entertained similar designs. In the provisions of alliances are sometimes found such expressions as *ἄρχειν τῆς θαλάσσης*, to rule the sea,

¹ Strabo, xvii. 19.

² Herodot. iii. 122 — Cf. Thuc. i. 4.

κυριεύειν . . . , to be lord or master, κύριον γίνεσθαι τῆς θαλάσσης, to become lord of the sea, ναυκρατεῖν, to have command of the sea ; but such terms have different shades of meaning according to the circumstances of time and place, and are seldom used in the literal sense of complete ownership ; for the most part they designate temporary supremacy, or predominating influence. It may be here mentioned that Castor, surnamed Φιλορόμαιος (friend to the Romans), believed to have lived about the time of Cicero, is said (on the authority of Suidas) to have written, amongst other works, Ἀναγραφὴ τῶν θαλασσοκρατησάντων, that is, a record of the countries that exercised mastery over the sea. Similarly, Eusebius in his *Chronicon* (Χρονικὰ παντοδαπῆς ἱστορίας), written about the beginning of the fourth century A.D., gives an account of the States that maintained supreme dominion over the sea, and the period in each case.

Most of the leading maritime States of antiquity claimed such sovereignty at one time or another. The policy of Athens was, in this respect, often avowed openly ; and to attain this supremacy, she was ready to wage war against Sparta or Philip, as the case might be. Themistocles urged upon the Athenians to make the sea their domain.¹ In his speeches to his countrymen, Pericles strongly emphasized the importance of possessing the empire of the sea,—θαλάσσης κράτος.² But the Athenians refrained from exercising tyrannical power over the seas. They welcomed all commercial relationships. Athens was a universal market ; the fruits of the whole earth, declared Pericles, found their way to the city.³ She carried on regular intercourse with most of the known countries of the civilized world ; for example, with Sicily, Italy, Marseilles, the regions of the Pontus and Bosphorus, Thrace, Asia Minor, Rhodes, Egypt. Indeed, the Athenians were in favour of the

Athens and
the freedom of
the sea.

¹ Thuc. i. 93 : τῆς γὰρ δὴ θαλάσσης πρῶτος ἐτόλμησεν εἰπεῖν ὡς ἀνθεκτέα ἐστὶ, καὶ τὴν ἀρχὴν εὐθὺς ξυγκατεσκεύαζε.

² Thuc. i. 143.

³ Thuc. ii. 38.

freedom of the sea. Thus Pericles passed a decree inviting all the Greeks resident in Europe or in Asia to send representatives to an assembly at Athens, to discuss not only such questions as the restoration of temples and the due performance of sacrifices, but also that of unmolested maritime navigation,—*καὶ τῆς θαλάττης, ὅπως πλέωσι πάντες ἀδεῶς καὶ τὴν εἰρήνην ἄγωσιν*.¹ This resolution was made in view of the jealousy of the Lacedaemonians. And conformably to this policy of preventing the Spartan preponderance at sea, and ensuring peaceful commercial enterprise, it was stipulated in the peace between Athens and Lacedaemon, 423 B.C., that the Lacedaemonians and their allies were not to sail along their coasts in ships of war, and that the burden of their other rowing-vessels should not exceed five hundred talents (that is, somewhat over twelve tons).²

Certain exports prohibited.

By way of protecting her country, Athens prohibited the exportation of those materials and provisions which she did not produce beyond her own needs. Thus in the time of Solon, when her industrial enterprise was in its infancy, oil alone was allowed to be exported.³ Customs duties were imposed on such foreign productions as were not absolutely essential for her well-being.

Maritime contracts and commercial courts.

Disputes arising out of maritime contracts were submitted to specially appointed judges, *ναυτοδίκαι*,⁴ who constituted tribunals corresponding to some extent to the modern commercial courts, or courts of admiralty. This institution, however, appears to have been only of a temporary character, and was, in all probability, practically confined to the age of Pericles ;—it was,

¹ Plut. *Per.* 17.

² Thuc. iv. 118 : *Λακεδαιμονίους καὶ τοὺς ξυμμάχους πλεῖν μὴ μακρᾷ νηϊ, ἄλλω δὲ κωπήρει πλοίω, ἐς πεντακόσια τάλαντα ἄγοντι μέτρα.*

³ Plut. *Solon*, 24 : *τῶν δὲ γινομένων διάθεσιν πρὸς ξένους ἐλαίου μόνον ἔδωκεν, ἄλλα δ' ἐξάγειν ἐκώλυσεν.*

⁴ Cf. A. Baumstarck, *De curatoribus emporii et nautodidis apud Athenienses disputatio* (Friburgi, 1828).

perhaps, abolished at the beginning of the fourth century B.C., and the jurisdiction of the court transferred to the *Thesmothetæ* (οἱ Θεσμοθέται), the junior magistrates (οἱ Ἄρχοντες), who heard causes assigned to no particular court. Demosthenes describes the *nautodicae* as those magistrates sitting in judgment upon commercial contracts, τοὺς περὶ τῶν συμβολαίων τῶν ἐμπορικῶν δικάζοντας. . .¹ They were appointed by lot annually. They held their sessions during the winter,² when maritime navigation was largely in abeyance. The verdict pronounced by the judges seems to have been final. It was possible to stipulate in conventions that the cases of litigants should be decided in accordance with their national laws; and, it may be, foreigners were also permitted to appear in person.³ It is interesting to note that Xenophon⁴ proposed to award a prize to the court of the emporium for the most expeditious and most equitable decisions relating to mercantile transactions; and soon after, in the time of Philip of Macedon, the evil arising out of delays and postponements was actually obviated by the introduction of a regulation providing for the delivery of judgment in certain classes of suits within a month from their commencement (ἔμμηνοι δίκαι). In these were included actions relating to commercial disputes, to the affairs of partners, and companies (ἔρανοι), and to the mines.⁵

In the later Greek history Rhodes became the chief naval power of the Aegean sea. There a maritime code was compiled—the laws of the Rhodians—which came to regulate Greek commercial relationships in general, and ultimately supplied many of the maritime provisions of the Roman emperors.

The laws of
the Rhodians.

¹ Demosth. *c. Lacrit.* 41.

² Cf. Demosth. *c. Apatur.* 7 : αἱ δὲ λήξεις τῶν δικῶν τοῖς ἐμπόροις ἔμμηνοί εἰσιν ἀπὸ τοῦ Βοηδρομιῶνος μέχρι τοῦ Μουνυχιῶνος, ἵνα παραχρῆμα τῶν δικαίων τυχόντες ἀπάγωνται.

³ Cf. Baumstarck, *op. cit.* pp. 11 *seq.*, 36 *seq.*

⁴ *De vectig.* 3.

⁵ Cf. Pollux, viii. 63, 101.

Prohibition of
tolls levied by
States in their
adjacent seas.

Polybius referring to the war between Rhodes and Byzantium, 220 B.C., mentions an interesting question concerning open markets, and the prohibition of the levying of tolls by States in their adjacent seas. He points out the favourable and commanding position of Byzantium, the richness of the districts round the Pontus, their exports of cattle and slaves, honey, wax, and salt-fish, and also imports, like olive oil and wines, besides the interchange of corn. Now if the Byzantines, he observes, had adopted a hostile attitude, and made common cause formerly with the Gauls, or at this time with the Thracians, the Greeks would have thereby been prevented from trading in these commodities; and if the surrounding barbarians secured control over the strait, it would be incumbent on the Byzantines to obtain the united assistance of the Greeks. This view of Polybius was actually followed; for, on account of the inroads of the Thracians and the Gauls, Byzantium appealed to the Greek States for aid, but was disregarded by most of them. Hence, the Byzantines, under pressure of necessity, attempted to levy dues on Greek vessels sailing in the Pontus.¹ This conduct was regarded as objectionable and illegitimate by the aggrieved traders, who made an appeal to the Rhodians as the acknowledged masters of the sea,—*διὰ τὸ δοκεῖν τούτους προεστάναι τῶν κατὰ θάλατταν*.² Rhodes thereupon declared war, and by her victory compelled Byzantium to discontinue the exaction of these maritime dues.

A few questions in reference to war at sea remain to be mentioned.

Embargo.

Upon declaration of war, and not infrequently even before making any public proclamation, an embargo was laid upon all enemy vessels which happened to be in the harbours of the other belligerent.

Intercourse in
time of war.

After the commencement of hostilities all peaceful intercourse between the subjects of the combatants ceased. Thus, the Megarians, having revolted from

¹ Polyb. iv. 38-46.

² Polyb. iv. 47.

Athens, were placed in the position of a hostile people; and consequently by a decree of Pericles, they were excluded from all harbours within the Athenian dominions as well as from the Athenian market,—*μάλιστα δὲ λιμένωνων τε εἶργεσθαι τῶν ἐν τῇ Ἀθηναίων ἀρχῇ καὶ τῆς Ἀττικῆς ἀγορᾶς.*¹

Enemy merchant-vessels and their cargoes were liable to capture and confiscation; and the same rule applied to all supplies, coming from any source whatever, that were destined for the adversary. Thus in 413 B.C., during the conflict between Athens and Syracuse, a squadron of the latter sailed to Italy, in consequence of a report that ships laden with supplies were on their way to the Athenians. Most of these vessels were eventually intercepted and destroyed; and the Syracusans likewise destroyed a quantity of ship-timber which was lying ready for the enemy in the territory of Caulonia, an Achaean town on the east coast of Bruttium.²

Enemy merchant-vessels captured.

In most Greek States there was something of the nature of a prize court, to which appeals could be made by those who held they had been, contrary to the law of nations, deprived of their property. In Athens the assembly of the people frequently took cognizance of such claims. Thus two trierarchs were accused of appropriating the proceeds of a cargo from Naucratis, on the ground that, if confiscable, it ought to have gone to the State. An assembly was therefore held, and the people voted for a hearing of the question.³ It is, however, impossible to say to what extent the claims

Rudiments of a prize court.

¹Thuc. i. 67.—Diod. xii. 39: ὄντος δὲ ψηφίσματος παρὰ τοῖς Ἀθηναίοις Μεγαρέας εἶργεσθαι τῆς τε ἀγορᾶς καὶ τῶν λιμένωνων. . . —Cf. Aristoph. *Acharn.* 533-4.

²Thuc. vii. 25: αἱ δὲ ἕνδεκα νῆες πρὸς τὴν Ἰταλίαν ἐπλευσαν, πυνθανόμεναι πλοῖα τοῖς Ἀθηναίοις γέμοντα χρημάτων προσπλεῖν. καὶ τῶν τε πλοίων ἐπιτυχούσαι τὰ πολλὰ διέφθειραν, καὶ ξύλα ναυπηγήσιμα ἐν τῇ Καυλωνιάτιδι κατέκαυσαν, ἃ τοῖς Ἀθηναίοις ἐτοῖμα ἦν.

³Demosth. *c. Timocrat.* 12: προβούλευμ' ἐγράφη. μετὰ ταῦτα γενομένης ἐκκλησίας προὔχειροτόνησεν ὁ δῆμος.

of foreigners, whose goods had been taken as prize, were entertained.

Rights of
neutrals at sea
often violated.

The rights of neutrals at sea were not always respected. The policy of belligerents with regard to non-combatant States was in general shaped in accordance with considerations of State utility. In actual warfare, there was no hesitation to adopt such practices against third States as were thought to be advantageous to the one side, and disastrous to the other ; and such third States, if weaker than their aggressor, were often obliged to submit to extreme measures, and rarely had any subsequent remedy. At the commencement of the Peloponnesian war, states Thucydides, the Lacedaemonians captured not only the trading-vessels of their enemy, the Athenians, and also of their allies, but even those of neutral States ; and all who were taken on board were treated as enemies, and indiscriminately slaughtered.¹ It is to be remarked, however, that the injured States did not by any means acquiesce in such treatment, in the sense of admitting a right on the part of the belligerent to act with excessive rigour. It was everywhere recognized that countries not being in any way engaged in the war, and not surreptitiously assisting a combatant, should not be subjected to any acts of unprovoked hostility either on land or on sea. But in practice the rights of others were not rarely subordinated to the exigencies of war. In 427 B.C. Alcidas, rejecting the proposals made to him for surprising the Athenians at Mitylene, and for raising a revolt in Ionia, decided to return to Peloponnesus. He sailed from Embatum along the coast and touched at Myonnesus in the territory of Teos, where he put to death most of the prisoners he had taken on his voyage. Having put into harbour at Ephesus, a deputation from the Samians of Anaea arrived there, and complained of his ill manner of liberating Greece ; they assured him that

¹ Thuc. ii. 67 : πάντας γὰρ δὴ κατ' ἀρχὰς τοῦ πολέμου οἱ Λακεδαιμόνιοι, ὅσους λάβουεν ἐν τῇ θαλάσῃ, ὡς πολεμίους διέφθειρον, καὶ τοὺς μετὰ Ἀθηναίων ξυμπολεμοῦντας καὶ τοὺς μηδὲ μεθ' ἑτέρων.

to put to the sword men who were not his enemies and were not lifting a hand against him, but were allies of Athens from necessity, would certainly convert neutrals into open adversaries. Alcidas was induced by these representations to liberate the remaining captives.¹

The practice of blockade is as old as maritime warfare. Blockade. It was always recognized by neutral countries, though its conditions and effects were from time to time disputed. The blockading forces invariably asserted their right to prevent third parties from proceeding to the blockaded places, and adopted extreme measures against such as attempted to effect an access thereto. During the investment of Athens (295 B.C.) by Demetrius Poliorcetes, king of Macedonia, the latter captured a merchant-vessel with a cargo of corn which had attempted to gain an entrance into the harbours of the city, and put to death both the owner and the pilot; and, says Plutarch, this proceeding terrified other merchants so much that they avoided Athens, where a terrible famine soon broke out.² Similarly, when some Romans carried provisions to the Libyans, who were at war with the Carthaginians (239 B.C.), they were taken prisoners, though afterwards were surrendered to Rome when a demand by diplomatic means was formally made.³ But this was perhaps not really a case of infringing the law of blockade in the strict sense.

¹ Thuc. iii. 32 : καὶ ἐς τὴν Ἐφεσον καθορμισαμένου αὐτοῦ Σαμίῳ τῶν ἐξ Ἀναίων ἀφικόμενοι πρέσβεις ἔλεγον οὐ καλῶς τὴν Ἑλλάδα ἐλευθεροῦν αὐτὸν, εἰ ἄνδρας διέφθειρεν οὔτε χεῖρας ἀνταιρομένους οὔτε πολεμίους, Ἀθηναίων δὲ ὑπ' ἀνάγκης ξυμμάχους· εἴ τε μὴ παύσεται, ὀλίγους μὲν αὐτὸν τῶν ἐχθρῶν ἐς φιλίαν προσάξασθαι, πολὺ δὲ πλείους τῶν φίλων πολεμίους ἕξειν. καὶ ὁ μὲν ἐπέισθη τε, καὶ Χίων ἄνδρας, ὅσους εἶχεν ἔτι, ἀφήκε, καὶ τῶν ἄλλων τινάς.

² Plut. *Demet.* 33 : . . . καὶ ναῦν τινα λαβῶν ἔχουσαν σίτον καὶ εἰσάγουσαν τοῖς Ἀθηναίοις ἐκρέμασε τὸν ἔμπορον καὶ τὸν κυβερνήτην, ὥστε τῶν ἄλλων ἀποτρεπομένων διὰ φόβον σύντονον λιμὸν ἐν ἄστει γενέσθαι, πρὸς δὲ τῷ λιμῷ καὶ τῶν ἄλλων ἀπορίαν.

³ Polyb. i. 83 : τῶν Καρχηδονίων τοὺς πλείοντας ἐξ Ἰταλίας εἰς Λιβύην, καὶ χορηγούοντας τοῖς πολεμίοις, καταγόντων ὡς αὐτοὺς. . .

Ancient blockade, however, was fundamentally different from the modern. It was conducted not with the essential object of isolating the enemy territory, but in connection with the siege; and by reducing the particular place or town to extremities, it served as a preliminary to the concerted onslaught.

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εἰρήνη, peace, i. 376.
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ἐπιμαχία, alliance for defensive purposes, i. 143, 378.
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ἐπιμιξία, freedom of intercourse, i. 208.
ἐπινομία, right of pasturage on the public land, i. 166.
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ἐπιστολαί, letters exchanged between States, i. 414.
ἐπιτροπή, award of, or reference to, arbitrators, ii. 138.
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ἔφεσις, submission of a dispute to the courts of a third city, ii. 137.
ἔχθρός, enemy, i. 127; ii. 166.
Ζεὺς ξένιος, Zeus the protector of strangers, i. 128.
ἦθος, custom, usage, i. 90.
ἦσυχάζειν, *ἦσυχίαν ἄγειν*, to keep quiet, remain neutral, ii. 304.
θεαροδόκοι, *βεωροδόκοι*, officials who received envoys on a sacred mission, i. 314.
θεαροδοκία, *θεωροδοκία*, the reception by the same, i. 314.
θέμις, law, right, i. 86, 87, 90.
θεσμοθέται, the six junior archons who heard cases assigned to no special court, i. 86 (note), 172, 189; ii. 179.
θεσμός, law, ordinance, i. 86.
θεωρία, sacred embassy, i. 306.
θεωρός, envoy on a sacred embassy, i. 306, 314; ii. 3, 286.
ἱερά χώρα, sacred territory, ii. 6.
ἱεροκήρυξ, sacred herald, ii. 6.
ἱερομήνια, *ἱερομηνία*, sacred period during festivals when there was a cessation of hostilities, ii. 284.
ἱερομνήμοιοι, representatives on the Amphictyonic Council, ii. 6.
ἱεροσύλησις, *ἱεροσυλία*, sacrilege, i. 353, 358; ii. 272.
ἰσοπολιτεία, isopolity, i. 141, 142, 143, 156, 229, 377; ii. 33.
ἰσοτέλεια, exemption from certain taxes, i. 155, 173, 174.
ἰσοτελεῖς, domiciled aliens exempt from those special taxes usually required of that class, i. 145, 173.
καταγώγια, halting-places, i. 33.
καταλύματα, lodgings, guest-chambers, i. 33, 318.
καταλύσεις, resting-places, i. 33.
καταρτιστήρ, arbitrator, ii. 135.
κατασκοπή, military espionage, ii. 299.
κατάσκοπος, a spy, ii. 300.
κήρυξ, herald, i. 305, 306, 307; ii. 321.
κληρουχία, colony whose inhabitants remained citizens of the mother-country, i. 176 (note), ii. 21, 117.
κληροῦχοι, natives of the regions where the cleruchi were established, i. 176.
κοινοδικιον (*κοινοδίκαιον*), a common court for several States, ii. 359.
κοινὸν δικαστήριον, a common tribunal usually set up by treaties, i. 207; ii. 63, 135, 136, 362.
κοινὸν συνέδριον, common council of various Greek States, ii. 141.
κόσμοι, magistrates of certain Greek cities, ii. 63.
κοσμοπολίτης, citizen of the world, ii. 172 (note).
κόσμος κσένιος (*ξένιος*), magistrate for foreigners in Crete, i. 195, 209.
κρίσις, arbitral award, ii. 138.
κριταί, members of certain arbitral courts, ii. 135.
κριτήριον, arbitral court appointed by a third city, ii. 135.
κσένιος (*ξένιος*), magistrate for foreigners in Crete, i. 195.

- κύριος, having power or authority, e.g. marital, i. 191, 192.
- λαύτεια, the Latin *lautia*, certain furniture supplied to public guests and envoys, i. 315.
- λάφυρα, λάφυρον, spoils taken in war, ii. 238.
- λαφυροπῶλαι, officers who had charge of the sale of booty, ii. 238.
- λειτουργίαι, certain burdens imposed on domiciled aliens, i. 150 (note), 167, 173.
- μαρτυρίαι, witnesses, evidence, ii. 150.
- μετοίκιον, a special tribute required of domiciled aliens, i. 164, 167, 173.
- μέτοικος, domiciled alien, i. 158, 169, 170.
- μετοικοφύλαξ, overseer and guardian of the domiciled aliens, i. 150 (note).
- Μητροῶν, a temple at Athens used as a depository for State archives, i. 190.
- μόθακες, μόθωνες, sons of Spartans and helot women, i. 178.
- μοῖτον, the Latin *mutuum*, loan, i. 75, 95 (note).
- ναύκληρος, shipowner, master, i. 201, 202 (note).
- ναυτοδίκαι, judges of the commercial courts, i. 171; ii. 378, 379.
- νεωδαμῶδεις, emancipated helots and their children, i. 178, 181.
- νεωκόρος, a certain sacred official, ii. 158.
- νομικόν, positive, conventional law as distinguished from φυσικόν, natural, i. 79.
- νόμιμα ἀνθρώπων, laws of mankind, i. 60, 96.
- νόμιμα Ἑλλήνων, laws of the Greeks, i. 52, 58, 59, 96; ii. 178, 195, 271.
- νόμος, law, ordinance, inveterate custom, i. 86, 90, 374.
- νόμος ἄγραφος, unwritten law, i. 54, 58.
- νόμος γεγραμμένος, written law, i. 54.
- νόμος ἴδιος, private law, i. 53.
- νόμος κοινός, common, universal law, i. 53, 58.
- ξείνος, ξένος, guest-friend, stranger, i. 127, 158, 169, 170, 215.
- ξεναγέται, taking charge of guests, i. 151 (note).
- ξενηλασία, hostility towards aliens, i. 129; ii. 376.
- ξενία, hospitality, friendly relationship between subjects of different States, or between a State and aliens, i. 150.
- ξένια, 'friendly gifts' given by a host to his foreign guest, i. 315.
- ξενικοί ἀγορανόμοι, foreign 'secretaries of the market, i. 193.
- ξενικὸν δικαστήριον, the court for hearing cases in which foreigners were litigants, i. 196, 197 (note), 209.
- ξενοδίκαι, magistrates for trying disputes in which foreigners were involved, i. 193, 194, 209.
- ἔυγγραφαί, written contracts; laws drawn up by special commissioners, ii. 18 (note).
- ἔμβολαί, international conventions, i. 198.
- ξύμμαχοι, allies, i. 176.

- οἰκιστής, the leader in founding a colony, ii. 123.
- ὁμολογία, agreement; terms of surrender, i. 375, 414; ii. 240.
- ὁμόνοια, union, alliance, i. 415.
- ὄρκια τάμνειν (τέμνειν), like the Latin 'foedus ferire,' to conclude a treaty, i. 395.
- ὄρκος, oath, i. 391.
- Παναϊτώλιον, general council of the Aetolian league, ii. 28.
- πανδοκεία, inns, i. 133.
- πανήγυρις, solemn assembly during a general festival, ii. 286.
- Πανιώνια, such assembly of the Ionian colonies, ii. 2.
- παροχή, gifts offered to foreign ambassadors, i. 318.
- πεδιών (= μετεών), assessor in a certain arbitration, ii. 141.
- περικτίονες, surrounding dwellers, neighbours, ii. 3.
- περίοικοι, non-Spartan inhabitants of Laconia, enjoying civil but not political rights, i. 39, 168, 178; ii. 3.
- πίστις, good faith, i. 120, 391.
- ποιητοί, naturalized citizens, i. 190 (note).
- πολέμαρχος, the Athenian polemarch, who had jurisdiction over domiciled aliens, i. 171, 199, 209.
- πόλεμος ἀκήρυκτος καὶ ἄσπονδος, heraldless and truceless war, ii. 210.
- πόλις, city, State, i. 28.
- πόλις ἔκκλητος, a third city arbitrating between two others, or a city where certain causes were to be tried, i. 140, 203, 207; ii. 22, 64, 71, 134, 135, 136, 149, 362.
- πολίται γένει (or φύσει), natural-born citizens, i. 190 (note).
- πολίται δωρεῖ, naturalized citizens, i. 190 (note).
- πολιτεία, citizenship, i. 156, 184.
- πολίτης, citizen, i. 158.
- πορνοβοσκός, keeper of a disorderly house, i. 163.
- πρέσβεις, envoys, ambassadors, i. 304, 307.
- πρεσβευτής, ambassador, i. 305, 306.
- πρέσβυς, ambassador, i. 304.
- προβούλευμα, a preliminary decree of the Athenian senate which became law when passed by the assembly, ii. 23.
- προδικία, right to have cases tried before others, i. 156.
- προδοσία, treachery, treason, ii. 300.
- προδότης, traitor, ii. 300.
- προεδρία, right to occupy front seats at public games, etc., i. 143.
- προμαντεία, privilege of consulting an oracle before others, i. 156.
- προξενιτής, intermediary between vendor and purchaser, i. 153.
- προξενία, compact of friendship between a State and a foreigner, i. 173.
- πρόξενοι, public 'guests' of a State, acting, in a sense, as consuls, i. 145, 149, 153, 173.
- προπράτωρ, one who negotiates a sale in his own name, i. 153.
- πρόσodos, right to appear before the public assembly, i. 156, 172.
- προστάτης, patron of the domiciled aliens, i. 146, 152, 153, 156, 160, 162, 163, 164, 175, 177.
- πτολίπορθος, destroyer of cities, epithet of Ares, ii. 171.
- πυλαγόραι, delegates on the Amphictyonic Council, ii. 6.

- πυρφόρος*, Lacedaemonian priest who carried before the armies the sacrificial fire at the time of an engagement with the enemy, ii. 270.
- πωλήτης*, 'seller,' officer in Epidamnus who regulated commercial transactions between his countrymen and the Illyrians, i. 128.
- ρήτρα*, ordinance, *e.g.* of Lycurgus, i. 86.
- ρύσιον*, *ρύσια*, booty, plunder; that which is seized as a pledge, or by way of reprisals, i. 141, 198; ii. 353.
- σκαφηφόροι*, domiciled aliens carrying for their patrons certain vessels in the Panathenaic processions, i. 170.
- σκιαδηφόροι*, daughters of domiciled aliens carrying parasols over the heads of Athenian women, i. 170.
- σπονδαί*, treaty, truce, i. 376, 377, 392, 393; ii. 280.
- σπονδή*, drink-offering, libation, i. 392.
- σποινδοφόρος*, one who brings proposals for a treaty of peace, one who proclaims the sacred truce; also, a term representing the Latin *fetialis*, i. 304 (note); ii. 316.
- στήλαι*, slabs inscribed with records of decrees, treaties, etc., i. 414.
- στρατηγοί*, commanders, ministers of war; also, chief magistrates of certain Greek States, i. 196; ii. 27.
- συγγραφή*, contract, i. 132, 202; ii. 149.
- σύγκλητος*, general assembly of certain Greek leagues, ii. 27.
- σύλα*, *σύλαι*, measures of reprisal, i. 141, 198; ii. 70, 349, 353, 364.
- σύμβασις*, *συμβατήριος λόγος*, overtures in the conclusion of treaties, i. 413.
- σύμβολα*, *σύμβολον*, international convention, i. 133, 139, 198, 203, 209, 322, 378; ii. 71, 137. (*συμβολά* and *συμβολή* are sometimes used in inscriptions, i. 378 (note).)
- συμμαχία*, alliance both for offensive and defensive purposes, i. 143, 377, 378; ii. 33.
- σύμμαχοι*, allies, ii. 16.
- συμπολιτεία*, a league of several States interchanging civic rights, i. 144, 377.
- σύνδικοι*, advocates, i. 152; ii. 138.
- συνέδριον*, general assembly, especially of members of an alliance or a league, ii. 27.
- σύνεδρος*, ambassador sent to a congress as a select commissioner, i. 307; ii. 5, 21, 361.
- συνήγοροι*, delegates sent as advocates in arbitral causes, ii. 138, 149.
- σύνθεσις*, *συνθεσίαι*, contract, convention, i. 375.
- συνθέωρος*, colleague of envoy on a sacred mission, i. 306.
- συνθήκη*, contract, treaty, convention, i. 375, 376, 378.
- συνοίκισις*, *συνοικισμός*, association of small village communities, i. 29.
- σύνταξις*, covenant, contract; contribution of allies, i. 375; ii. 22.
- σύστημα τῶν φητιαλίων*, Greek name for the college of *fetialis*, ii. 321.
- σφραγίς*, seal, i. 132, 397.
- τριώβολον*, three obols, *i.e.* half a drachma, i. 167.

- τρόπαιον, trophy erected on or near field of battle by the victorious belligerent, ii. 296.
 τροπή, defeat in the field, ii. 296, 297.
 τρόφιμοι, foster-children, i. 182.
 ὕδριαφόροι, the wives of domiciled aliens carrying pitchers in certain festive processions for the wives of their patrons, i. 170.
 ὑπήκοοι, subject allies, i. 176; ii. 16, 17.
 ὑποτελεῖς φόρον, said of allies subject to taxation, ii. 17.
 φητιάλεις, φητιάλοι, φητιάλιοι, etc., the Roman *fetiales*, ii. 316.
- φόνος ἀκούσιος, involuntary homicide, i. 172.
 φόνος ἐκ προνοίας, wilful murder, i. 172.
 φόρος, tax paid by Athenian allies, ii. 18, 21.
 φράτρα, φράτρη, a subdivision of the φυλή, i. 122.
 φυλή, class, tribe, or division in Athens, i. 122.
 φυσικὸν δίκαιον, natural law, i. 79, 80.
 χορηγία, the equipping of a chorus imposed on domiciled aliens, i. 167.
 ψήφισμα, a measure passed or ratified by the Athenian ecclesia, i. 205, 414.

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