

**‘Oral law’ and the Emergence of Written  
Legislation in Archaic and Classical Greece**

**Henry Peter Linscott**

**UCL**

**PhD in Classics**

## **Declaration**

I, Henry Peter Linscott confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

## Abstract

This thesis aims to understand the social structures and normative language that underpinned the concept of law in the Greek *poleis* of the 7<sup>th</sup> and 8<sup>th</sup> centuries BCE, and the ways their legal cultures evolved as they began to produce written legislation. It will begin by identifying the social structures recognised in the poetry of Homer and Hesiod, and the areas of dispute that appear to have triggered formal resolution processes, and use these to examine the mechanisms for regulating issues of violence, sexual access, property and inheritance before written law, and consider the concerns that may have driven *poleis* to seek new solutions to social problems. Since law is as much a phenomenon of language as of behaviour, it will then proceed to analyse the syntactical structures and diction for articulating norms in the oaths and *gnōmai* of Homeric and Hesiodic verse and will show that the capacity to produce complex, prescriptive, structured rules which expressed the consequences of actions was already in use in Hesiodic collections of normative principles and Homeric promissory oaths. It will also seek to compare these features with societies in the Near East which suggest that the Greeks' normative culture did not develop in isolation but was also likely to have engaged with the customs and legal systems of their neighbours.

This will then inform a comparison of the syntax and beliefs evident in written laws with the use of similar structures in our earliest poetic sources. It will argue that laws drew on key sources of cultural authority through their sense of both divine and community justice, while the language of written laws made use of existing diction for expressing consequences of actions and constructing formalised procedures. Finally it will examine how written laws became embedded in the *polis*' wider normative culture, the changes they brought about and the ways they used or left space for existing legal behaviours. It will argue that the links between legal text and 'oral law' were a fundamental part of this evolution, using similar language and methods of dispute resolution to the areas of conflict identified earlier, and even using oral means of communication to be more widely propagated and understood. However, it will also consider the ways that written law changed the relationship between the citizens of Greek *poleis* and their laws, through their monumental presence and distinctive organisation. It will argue that, while the language for articulating law was rooted in earlier normative diction, the act of writing such rules down could have functioned as a means to channel the process of adjudication and maintain its consistency. It will also examine the cultural impact of written law as it changed the Greeks' understanding of how rules could be created, with traditions of stories growing up around written law, and examples of laws being

used alongside other norms both as sources of evidence, but also as a kind of moral education in philosophical and forensic discourse.

## Impact Statement

This project began with the realisation that legal processes were evident in the Homeric epics which made no use of written legislation and therefore raised the question of the sorts of rules that were at work in these institutions and what they ‘looked like’. This required an understanding of what ‘oral law’ was in order to recognise and identify features in written legislation that could reasonably be found in the works of Homer and Hesiod. In doing so, the thesis brought together a number of strands, using anthropological definitions of law to help recognise both the normative practices and the imperatives behind legal language, close analysis of inscriptions to look beyond the patterns already identified by the likes of Gagarin, Sealey and Davies, and comparative studies with works from the Near East.

By combining each of these components, it is hoped that this thesis has enriched the study of both oral and written law in archaic and classical Greece by identifying the ‘legal’ behaviours which archaic Greek sources describe, illuminating the subtler features of Greek normative diction and showing how the language of written laws grew from the vocabulary and syntax used to articulate oaths and *gnōmai* in the Homeric epics and Hesiod’s didactic. It has considered these developments in the context of the evolving *polis* with the changes to their social structures between the 8<sup>th</sup> and 6<sup>th</sup> centuries, and also examined how they could have been influenced by Near Eastern cultures, especially considering evidence from the Hebrew Bible which also bears the hallmarks of an oral compositional style and has much in common with the legends and discourses that ‘oral laws’ could be assimilated into and which grew up around legal texts. Moreover, the legal passages of the Pentateuch are both chronologically and geographically closer to archaic Greece than a number of other Near Eastern sources and it is hoped that comparative studies by Classicists might look afresh at the work done by Biblical scholars to see how such traditions could have passed into Greek culture before this period and during it.

By considering the development of law in the archaic Greek *poleis* it is hoped that this can shed light on the ways that legal writing can evolve in a society, its relationships with oral cultures and the impact it has on dispute resolutions. By using an anthropological understanding of ‘law’ it has aimed both to specify the ways that law can be recognised in our extant sources and to show how ‘oral laws’ can be seen in the literary outputs and practices of societies, removing the preconceptions of a literate society and seeing the value of other modes of normative expression.

## Acknowledgements

The author would like to thank:

Ahuvia Kahane and Rosalind Thomas for showing such interest in the project and for inspiring me to embark on the endeavour. While I did not get to work with either of them on the project as a whole, they influenced and assisted in the proposal phase and their encouragement and belief made this thesis possible.

Peter Agocs and Steven Colvin whose contributions in my early drafts and support through the process were extremely valuable in ensuring that the correct processes were followed and in providing cool heads at key points.

The staff and students of North London Collegiate School. The school has been very generous in its support of my research, taking a chance by employing me in the first place, allowing me to continue working part time throughout the project and financially supporting me with tuition fees. The students have always kept me challenged and grounded and it has been a real joy to go on this journey with them and to share my experiences: I hope they have learned as much from me as I from them.

Georgia Sams, who, along with many other friends and family has always provided help, kind words and a calming influence that have helped me persevere through this project throughout my seven years of part-time study.

Christopher Carey whose warmth, good humour and unerring capacity for saying the right thing have made him the perfect supervisor. I have always come away from our meetings feeling buoyed and warm and his experience and serenity have been truly invaluable.

## Abbreviations

### Collections of Inscriptions and Standard Works of Reference

- GP* Gagarin, M. & Perlman, P. J. (2016). *The Laws of Ancient Crete c.650-400 BCE*. Oxford: Oxford University Press.
- IC* *Inscriptiones Creticae* <https://epigraphy.packhum.org/>  
(Accessed Sept.2013-Nov.2020)
- IG* *Inscriptiones Graecae* <https://epigraphy.packhum.org/>  
(Accessed Sept.2013-Nov.2020)
- ML* Meiggs, R. & Lewis, D. (1969). *A Selection of Greek historical inscriptions to the end of the fifth century BC*. Oxford: Clarendon Press.
- Nomima I* van Effenterre, H. & Ruzé, F. (1994). *Nomima: Recueil d'inscriptions politiques et juridiques de l'archaïsme grec* (Vol. 1). Rome: École Française de Rome Palais Farnèse.
- SEG* *Supplementum Epigraphicum Graecum*  
<https://referenceworks.brillonline.com/browse/supplementum-epigraphicum-graecum> (Accessed Apr.2016)

### Ancient Authors

Classical Greek and Roman texts and collections use the same abbreviations as the Third Edition of the Oxford Classical Dictionary (2003). For Near Eastern sources this work has also used:

- CH* *Codex Hammurabi* from  
Harper, R. F. (1904) *The Code of Hammurabi, King of Babylon*  
London: University of Chicago Press
- Exod. Book of Exodus
- Deut. Deuteronomy
- Lev. Leviticus

All Biblical texts are from <https://www.mechon-mamre.org/> (Accessed Sept.2013-Nov.2020) translations are from the King James Version unless a more literal alternative has been offered.





## Contents

<b>Introduction</b>	10
<b>Chapter 1 – The Evolving <i>Polis</i> and its Normative Structures</b>	38
<b>Chapter 2 – ‘Oral Law’ and the Origins of a Greek Legal Vocabulary</b>	95
<b>Chapter 3 – The Anatomy of Greek Legal Inscriptions</b>	140
<b>Chapter 4 – How Writing Changed the Law</b>	182
<b>Conclusion</b>	251
<b>Bibliography</b>	257
<b>Appendices</b>	266

## Introduction

ἦμος δ' ἐπὶ δόρπον ἀνήρ ἀγορήθεν ἀνέστη  
κρίνων νείκεα πολλὰ δικάζομένων αἰζηῶν,

*at the time when a man rises for supper from the agora  
after judging many quarrels from eager litigants.*

As Odysseus describes the length of time he clung to the branch of an olive tree awaiting the reversal of the whirlpool Charybdis, he turns to the mundane image of a judge in the *agora* getting up for his dinner. The ordinariness of the simile reflects how commonplace such scenes must have been and suggests that Homer and his audience were familiar with the means of resolving quarrels implicit in it.<sup>1</sup> Disputes are an inevitable and important part of human interaction<sup>2</sup> and consequently societies have a plethora of rules that provide guidance on acceptable behaviour, consequences for breaches, and methods of resolution. The *poleis* that were emerging in 8<sup>th</sup> century Greece can have been no exception and would have had to contend not only with the issues that arose in any settled agrarian community, but also with the new challenges that came from burgeoning populations, diversifying economies and urbanisation.<sup>3</sup> Throughout the Archaic period we find many references to tensions between social groups in poetry and considerable anxieties over the distribution of wealth and power in society,<sup>4</sup> as increased populations and movements of goods and settlers put more pressure

---

<sup>1</sup> MacDowell, D. M. (1978, p.16), Roebuck, D. (2001, pp.8-9, 72)

<sup>2</sup> Roberts, S. (1979, pp.45-56)

<sup>3</sup> Ober, J. (2015, p.29), Crielaard, J. P. (2009, pp. 351-66), Morgan, C. (2009, pp.49-54), Gagarin, M. (2005, pp. 91-93; 2004, p. 177), Thomas, R. (2005, p. 43; 1996, pp. 27-29), Murray, O. (2000, pp.236-38), Perlman, P. J. (2000, pp.59-60), Osborne, R. (1999, pp. 346-47), Hölkeskamp, K-J. (1992, pp. 72-73)

<sup>4</sup> Papakonstantinou, Z. (2008, pp.105-112), Gagarin, M. (1986, pp.121-22)

on territory<sup>5</sup> and questions were raised about the relationships between individuals and their communities.

From the end of the 7<sup>th</sup> century we begin to see evidence of *poleis* in different parts of the Eastern Mediterranean inscribing what appear to be laws in sites that were pertinent to their application or on monuments that would have added weight to their provisions.<sup>6</sup> These texts are distinctive through their appeals to both divine and community authority and their codification of both substantive and procedural rules that imply efforts by *poleis* to channel dispute resolutions, impose limitations on officials and regulate areas of social interaction where conflicts could occur.<sup>7</sup> The gradual adoption of written law across a number of *poleis* must have caused significant changes to their physical, social and cultural landscapes and - as in all societies that develop legal writing - affected the way that the law was transmitted, adapted, utilised and understood.<sup>8</sup> However, the adoption of written law seems also, in part, to have been conditioned by an existing culture of norms, social organisation and language, reflected in the diction, values and mechanisms described in earlier poetry which, in its turn, continued to resonate in their normative culture.<sup>9</sup>

It is this point of transition that is the focus of this thesis: the nature of the normative systems that existed before written law in the archaic *poleis*, the manner and extent to which legal writing was influenced by these earlier institutions and modes of communication, what it was used for, and how it came to shape the rules and identities of the *poleis* that emerged in the Classical period. By considering these questions it will aim to shed light on what ‘oral law’ looked like in Greece both before and after written legislation through examination of the types of rules and institutions that arose to regulate society and limit the impact of conflicts. By identifying the areas of conflict, systems of resolution and types of normative diction available to archaic poets and comparing them with those found in written laws, both Greek and Near Eastern, it will seek to understand the origins of Greek legal culture and the role played by ‘oral laws’. This will also allow us to consider the ways that written law shaped the institutions, beliefs and traditions of the *poleis* themselves, and how existing

---

<sup>5</sup> Morris, I. (2009, pp.64-72), Crielaard, J-P. (2009, pp.349-57), Burkert, W. (1992, pp.9-22), Osborne, R. (1996, pp.159-202)

<sup>6</sup> Our earliest evidence of legal inscriptions comes from texts dated to the late 7<sup>th</sup> century at Dreros *GP Dr 1-7*. (*ML 2*, van Effenterre, H. 1946, pp.588-604) and Tiryns *SEG 30.380*, Thomas, R. (1996, pp.9-10, 19-20; 2005, p.43), Wilson, J-P. (2009, p.552), Gagarin, M. (2008, pp.46-50)

<sup>7</sup> See Chapter 3

<sup>8</sup> See Chapter 4

<sup>9</sup> See Chapters 1 and 2

traditions, customs and modes of expression continued to be a part of these communities' legal practices.

From this study there will emerge some common patterns that many Greek states adopted: in particular the syntactical structures of law, its sources of both community and divine authority, its key concerns and several of the mechanisms for resolving them. However, this was also a period in which the individual city-states were developing their own unique political identities and religious traditions, demonstrating both commonalities of cultural heritage but also great pride in their differences. As written legislation began to appear, we shall see that the laws of the *poleis* sometimes show common concerns and concepts, but use legal writing in different ways to resolve key issues. Moreover, the ways in which laws were collected and displayed, the institutional frameworks in which they operated, and the traditions that grew up around them, were also often distinctive and would contribute to the ways in which cities defined themselves in relation to their neighbours and the wider world of the Eastern Aegean. This process of transition is therefore vital for understanding the cultures and social systems of Greek *poleis* and their evolution, and can also be used to understand the ways that written laws could have emerged in other cultures that adopt the technology of legal writing and the consequences that result from it.

There has been much debate around whether 'oral law' existed in Greece both before and after the appearance of written legislation with much of it depending on the definitions one chooses to employ and the criteria norms need to satisfy in order to be considered 'legal'.<sup>10</sup> Gagarin has argued that the writing and publication of some rules distinguished laws from other norms, that inscriptions created the specific category of rules that might be identified as laws and, therefore, that there can be no 'law' without writing.<sup>11</sup> Gagarin's specific separation of 'laws' from other *nomoi* helps to identify the changes in Greek society that legal inscriptions

---

<sup>10</sup> Gagarin, M. (2008, pp. 30-38, 115-121; 2005, pp. 82-90; 1986, pp. 6-15, 51-58, 101, 122-24), Thomas, R. (2005, pp. 50-57; 1996, pp. 14-16; 1992, pp. 67-68, 130, 146-47), Papakonstantinou, Z. (2008, pp. 47-51, 72-81), Wilson, J-P. (2009, p. 556), Morgan, C. (2009, p. 60), Harris, E. M. (2004, pp. 21-22)

<sup>11</sup> (1986, pp.1-12; 2008, pp.3-6, 13-37) Gagarin cites the exception of Mediaeval Iceland with its regular recitations of the community's laws by a 'lawspeaker' which set them apart from their other norms. Cf. Andersson, T. M. & Miller, I. M. (1989, p.7). While we have no evidence of anything suggesting such recited collections in Greece, Sealey (1994, p.29) has suggested that the way that the earliest 'lawgivers' drew on traditional norms could be better understood by the performance and mutability of such a system. Indeed, as we shall see, the same type of syntax can be found in both Greek legislation and in collections of norms from the earliest didactic poetry (*See Chapters 2 & 3*).

brought about. While sources that pre-date the appearance of legal writing like Hesiod's *Works and Days* or the Homeric epics and hymns do exhibit similarly prescriptive norms to those found in written law, they are often blended with other more descriptive rules or ones which pertain to behaviours which bring on divine or natural consequences rather than those which may be enforced in a court of law.<sup>12</sup>

However, when exploring the evolution of Greek law and the Greeks' own understanding of 'law' and 'justice', Gagarin's position relies on a narrow definition of law which makes it harder to acknowledge the role that earlier normative systems played in the development of written law with their verbal, syntactical structures in addition to the visual cues used by scribes,<sup>13</sup> and creates sharp distinctions between law, morality and religion that are not necessarily even evident in the written legislation that survives. Terms like *nomoi* and *themistes* were not exclusively applied to written law,<sup>14</sup> and, while a difference between written laws and *agraphoi nomoi* can be observed in sources from the middle of the 5<sup>th</sup> century, we have significant evidence to suggest that oral and written *nomoi* formed a co-dependent relationship throughout the archaic and classical periods. As Thomas has argued, depictions of trials in Homer like the one portrayed on the *Shield of Achilles*,<sup>15</sup> which makes no suggestion of the use of writing, reflects a society which "had run on 'oral' or customary law, that is, generally accepted norms of behaviour".<sup>16</sup> Even in the latter part of the 5<sup>th</sup> century BCE, unwritten laws still had an acknowledged part in the social and judicial fabric of the Greek *poleis*, and we have considerable evidence for written law in the classical period being used as only one of a variety of types of norms and arguments to influence juries.<sup>17</sup>

Thomas has also argued that writing alone was insufficient to record and propagate law as rules were almost certainly meant to be read aloud, there are references to the use of poetry or song to record and transmit the law, gaps in archaic legislation suggest the existence of understood legal rules and procedures, and there are also some officials (such as the enigmatic *mnēmones*) whose role appears to have spanned the development from pre-literate to literate

---

<sup>12</sup> (Gagarin, M. 1986, p.53-54 ; 2008, pp.3-6), Papakonstantinou, Z. (2008, p.47)

<sup>13</sup> See Chapter 3

<sup>14</sup> Gagarin, M. (1986, p.53)

<sup>15</sup> *Il.*18.497-508

<sup>16</sup> Thomas, R. (1992, p.68), Hölkeskamp, K.-J. (1992, p.60), Papakonstantinou, Z. (2008, p.47)

<sup>17</sup> Thomas, R. (1992, p.68-69), Ford, A. (1999, pp.231-40), Wohl, V. (2010, pp.26-37), Todd, S. C. (1993, pp.32-35), Morgan, C. (2009, p.60), Kapparis, K. (2019, p.34)

justice.<sup>18</sup> Early writing was used ‘in the service of the spoken word’, recording words to be read aloud, as memory aids for speech or to give objects their own voice using language that closely reflected and reinforced the dictions and registers already in use,<sup>19</sup> and it is likely that this was as true of legal inscriptions as it was of other forms of writing. Nor was written law seen as strictly necessary to a functioning ‘legal’ society: the Spartan eschewal of written law in favour of the oral tenets of the *Rhetras* did not mean that they were seen as ‘proto-legal’ or ‘lawless’ by other Greeks, but – just as the Athenians valued their profusion of inscriptions – were seen to take great pride in showing obedience to their *nomoi*, the unique features of their transmission and the legends of their lawgivers.<sup>20</sup>

In order to understand the relationship between written laws and earlier forms of normative discourse and the implications this holds for the evolution of Greek legal culture, we must consider what these different types of norms looked like, both in form and in function. Studies of the values and topics of dispute in Homer and Hesiod have been highly effective in demonstrating the existence of sophisticated traditional institutions for resolving disputes, the abstract authority behind their rules, and the importance attached to *themis*, *dikē* and the social structures of the *polis* and *agora* that distinguished the civilised from the barbarous.<sup>21</sup> Sealey has emphasised the importance of the practical applications of customary norms in governing behaviours and informing the evolution of law and its substance.<sup>22</sup> Likewise Roebuck and Papakonstantinou have described a variety of procedures, beliefs and concerns that emerge from considering the disputes and points of contention evident in the works of Archaic poets.<sup>23</sup> The relationship between such values and the evolving legal realities of classical Athens, have been comprehensively catalogued by Dover,<sup>24</sup> while the anthropological focus of Humphreys’ studies have revealed the complex and nuanced interactions between custom, kinship and the law.<sup>25</sup> These works have paved the way for a plethora of studies on legal issues and their

---

<sup>18</sup> Thomas, R. (1996, pp.10, 14-19; 2005, pp.50-57), Kristensen, K. R. (2008, pp.1-9), *See pp.186-218*

<sup>19</sup> Thomas, R. (1992, pp.57-65), Wilson, J-P. (2009, p.556), Kristensen, K. R. (2008, pp.1-2), Papakonstantinou, Z. (2002, pp.145-46)

<sup>20</sup> Hdt.7.102-4, Plu. *Lyc.*13-29 Thomas, R. (1992, p.23)

<sup>21</sup> Hölkeskamp, K-J. (1992, p.61), Roebuck, D. (2001, pp.80-88), Crielaard, J. P. (2009, pp.353-54)

<sup>22</sup> Sealey, R. (1994, pp.1-23)

<sup>23</sup> Roebuck, D. (2001, pp.52-106) Papakonstantinou, Z. (2008, pp.47-126; 2007, pp.89-110)

<sup>24</sup> (1974, pp.74-160)

<sup>25</sup> (1988, pp.465-82)

relationship with Athenian morality,<sup>26</sup> and more holistic evaluations of how these different sources of normative authority allowed Greek *poleis* to function and gave them their distinctive characters.<sup>27</sup>

However, while these studies have shown much about the institutions and practices of Archaic and Classical Greece, they have not explored in detail the individual rules behind them and the forms in which they were communicated. By identifying the language that was used to articulate rules that might reasonably be called ‘oral laws’ alongside the institutions and normative practices available to Greeks of the 8<sup>th</sup> and 7<sup>th</sup> centuries, we can see how communities were organised around their normative culture, the appearance of the rules they used before written law, and how these might have influenced and cooperated with legal inscriptions to give the *polis* its authoritative voice when written law began to emerge. Roth has remarked on the similarity of syntax in Hesiod’s normative maxims in *Op.* 707-13 with casuistic legal texts and suggested that this is indicative of the ways in which the rules applied in the scene on *The Shield of Achilles* could have been transmitted.<sup>28</sup> However, subsequent discussions of Homeric and Hesiodic rhetoric<sup>29</sup> and *gnōmai*<sup>30</sup> have principally focused on their persuasiveness and transmission of wisdom in general rather than considering their normative role in particular. By considering the functionality and applications of syntax in expressing these values and concerns, we can see how such statements were a fundamental component of a formalised diction that could be used to recall established rules, set agreements and persuade recipients to follow advice. Moreover, understanding their role in expressing societal rules and impressing descriptive, prescriptive and consequential norms on listeners will also be a valuable stage in understanding the significance of similar diction in the formation of written law.

Oaths are another important source for understanding normative expression, either attesting to the veracity of a claim (assertory) or setting out terms of agreements (promissory),

---

<sup>26</sup> Harris, E. M. (2006a), Cohen, D. (1990, pp.147-66), Fisher, N. (1990, pp.123-38), Murray, O. (1990, pp.139-46)

<sup>27</sup> Todd, S. C. (1993), Lanni, A. (2006; 2016), Kapparis, K. (2019)

<sup>28</sup> Roth, C. P. (1976, p.335-8) Gagarin has dismissed this comparison on the basis that *gnōmai* are distinct from law (1986, 25-26) though this should not be set against their normative function and the role this could have had in shaping the language of law.

<sup>29</sup> Knudsen, R. A. (2014, pp.149-52) Walker, J. (1996, pp.248-64)

<sup>30</sup> West, M. L. (1978, pp.3-46; 1997, pp.76-78, 306-7, 324-32), Lardinois, A. (1995, pp.1-32; 1997, pp.213-33), Knudsen, R. A. (2014, pp.122-26)

and invoking the gods to enforce the promises that are being made.<sup>31</sup> Thür has suggested that the phrasing of oaths as challenges could have been used to settle arguments by conferring the risk of divine punishment onto the swearer,<sup>32</sup> and there is a large body of research analysing the rhetorical use of oaths to prove an argument or to manipulate oaths in such a way as to convince a listener both in classical Athenian courts and in tales of gods and epic heroes.<sup>33</sup> However, casuistic diction can also be found in the way that oaths are used to form new rules and agreements in addition to their roles in argumentation and dispute resolution. Sealey has suggested the possibility of casuistic language being formulated as resolutions to disputes decided by oath-challenge being influential on written law.<sup>34</sup> However, his analysis focuses very much on the use of oaths as evidence and there is room to explore their use of language and divine sanction to facilitate the creation of clear, authoritative rules, which, in a number of important cases, bears striking resemblance to the normative language of both *gnōmai* and written laws.<sup>35</sup> The comparison of oaths with other forms of normative language will help us to uncover the persuasive and psychological impact that the language of rules as a whole had on shaping the behaviour of whole communities and thus their place in the evolution and composition of written law.

The discussion of what marks out the large body of Greek inscriptions that are regarded as ‘legal’ in nature has also been rather limited. Casuistic diction has frequently been identified as a feature of Greek legal inscriptions, leading many scholars to attach great importance to the writing down of procedures in Archaic and Classical Greek law.<sup>36</sup> The layering of multiple subclauses signified by the use of connecting particles has also been remarked on by Gagarin as an important source of structure,<sup>37</sup> and has also called attention to the visual features that stonecutters were using to make inscriptions easier to follow.<sup>38</sup> However the functionality of this language combined with the subtler nuances of different

---

<sup>31</sup> Sommerstein, A. H. (2007, pp.2-4), Sealey, R. (1994, pp.95-100), Todd, S. C. (1993, pp.34-36, Gagarin, M. (2007, pp.39-47; 2008, pp.190-91) cf. Arist. *Rhet.*1.15 1375a22-25

<sup>32</sup> Thür, G. (1996, pp.57-72)

<sup>33</sup> Papakonstantinou, Z. (2008, pp.117-18), Fletcher, J. A. (2008, pp.19-46), Gagarin, M. (2007, pp.39-47; 2008, pp.190-91 cf. Arist. *Rhet.*1.15 1375a11-24), Parker, R. (2005a, pp.73-75) Sealey, R. (1994, pp.91-106), Callaway, C. (1993, pp. 15-25; 1998, pp.159-70)

<sup>34</sup> Sealey, R. (1994, pp.91-100)

<sup>35</sup> See pp.108-24

<sup>36</sup> Gagarin, M. (1986, pp.1-5, 63-67, 72-80), Sealey, R. (1994, pp.43-50), Foxhall, L. & Lewis, A. D. E. (1996, p.3), Ober, J. (2005, pp.397-98), Thomas, R. (2005, pp.48-54), Morris, I. (2009, p.72), Wilson, J-P. (2009, p.552)

<sup>37</sup> (1981, pp.154-61; 1982, pp.129-37)

<sup>38</sup> (1986, p.92; 2008, pp.45-65, 82)



types of casuistic expression and the substantive rules that are implied by the procedural<sup>39</sup> warrant further investigation, as this style and form may well prove a vital link to the earlier normative culture from which it arose. There is therefore considerable scope to use syntactical patterning in legal texts to help us identify the normative speech found in our poetic sources, especially with regard to the use of formalised syntax to express, generate and organise rules in oaths and *gnōmai*. This may give us an indication of the shape of ‘oral law’ and its applications before laws were written down, through the capacity of such language to articulate complex rules in the works of Homer and Hesiod, and the importance of verbal cues to the structure of legislation.

### **Recognition and Definition**

The principal problem with attempting to study the nature of ‘oral law’ and the transition from pre-literate to inscribed rules in any society is how to find and recognise the evidence for it in the surviving material. While the written legislation produced by the Greek *poleis* of the Archaic and Classical periods provides a useful starting point, it is by understanding what makes inscriptions ‘legal’ and the associated behaviours, applications and speech-patterns of their wider normative culture that we can aim to describe the evolution of law in the emerging *poleis*. Recognising and contextualising the common features of normative discourse before and after the appearance of written *nomoi* will help us to piece together the origins of the language of legal inscriptions and to identify their role in the evolution of both their distinctive diction and their place in the *polis*’ social architecture.

In order to proceed, therefore, we need definitions of law that are broad enough to include societies and rules that existed both before and after the advent of written law and which will help us identify the components of Greek normative culture that contributed to its development during this period in the Eastern Mediterranean. As Harris has argued, we should give especial consideration to anthropological definitions, as these, by their inclusion of a broad range of phenomena and social systems, are most likely to help us identify the features of law that emerged both gradually and piecemeal across the Greek *poleis* of the Archaic and Classical periods, and will also help us avoid anachronism and ethnocentrism.<sup>40</sup> However, within the discipline of legal anthropology, a number of different approaches can be discerned which offer a variety of insights into the components of what we might identify

---

<sup>39</sup> Thomas, R. (1996, pp.25-26), Harris, E. M. (2010, pp.24-33)

<sup>40</sup> Harris, E. M. (2004, pp.21-22)

as ‘legal’ or ‘normative’ language and behaviour. It is therefore necessary to consider the normative culture and rules of Archaic and Classical Greece both through the form of their words and their formalised behaviours, to acknowledge the multiple facets of what we would recognise as law, and to evaluate it in terms the Greeks themselves would have recognised and to understand its evolution.<sup>41</sup>

The various Greek words for the concept of ‘justice’, for instance, contain a similar ambiguity to that found in the English word ‘law’, which can mean both an individual rule (‘*a law*’) and the totality of coercive and psychological power represented by the rules categorised as laws and the machinery meant to administer and uphold them (‘*the law*’).<sup>42</sup> *Dikē*, *themis* and *nomos* are frequently interchangeable and each covers a huge semantic range from the natural to the forensic.<sup>43</sup> As we shall see, in Homer and Hesiod, *dikē*, *themis* and their cognates can mean ‘justice’ in the abstract sense, often characterised as the will of Zeus, but it can also be used to qualify specific actions as being in accordance with accepted custom or carry the sense of the individual provisions and rulings of formalised judicial processes.<sup>44</sup> Similarly, we can see the evolution of the word *nomos* from meaning ‘that which one is allotted’ in the poetry of Hesiod to something similar to the English word ‘law’ in both its senses.<sup>45</sup> The existence of such a distinction but with overlapping terminology in Greek highlights the importance of considering ‘law’ and ‘justice’ in the Archaic and Classical *poleis* as not only individual rules but also the language for making them and their role as components of entire normative systems that also included religion, custom and institutions. By seeking to understand the norms of Archaic Greece in their contexts, this thesis will need definitions that facilitate both the identification and categorisation of normative language, and which can help us establish the attendant features and behaviours that could justify the label of ‘legal’.

### *Law as Language*

Law, as Conley and O’Barr have observed, is a linguistic phenomenon which can be recognised as a mode of patterned normative expression enabling agreements to be struck and

---

<sup>41</sup> Hansen, N. H. & Nielsen, T. H. (2004, pp.23-29)

<sup>42</sup> Pospíšil, L. (1971, pp.1-2) and Sealey, R. (1994, pp.3-4) both make the point that this distinction is made more explicit in other languages such as Latin (which calls the two senses of law *lex* and *ius* respectively), French (*loi* and *droit*) and German (*Gesetz* and *Recht*).

<sup>43</sup> See *Appendices 1 & 2*, Sealey, R. (1994, pp.139-41), Palmer, L. R. (1950, pp.158-61)

<sup>44</sup> See pp.101-8

<sup>45</sup> See pp.102-3

disputes to be resolved not only in written media but also in the speech of different participants involved in legalistic activity.<sup>46</sup> The rules that make up normative speech should ideally have the capacity to set clear expectations,<sup>47</sup> with substantive principles to channel correct behaviour<sup>48</sup> and rules that either offer sanctions or empower individuals to transform disputes,<sup>49</sup> penalise offenders or obtain restitution.<sup>50</sup> Willi has emphasised the unique challenge that legal language faces since, while it may take on a life of its own in the manner of a technical discourse in some cultures,<sup>51</sup> the language of law has to communicate its rules clearly and succinctly not only to those with expertise, but also to the wider public.<sup>52</sup> In order to express the rules of society and for effective normative communication, a formalised diction, comprising both precise terms for actions that require legal interventions and a clear register<sup>53</sup> that creates a sense of solemnity around the utterance or formulation of rules and expectations is extremely valuable. In this thesis, we shall see that, while the settings of formalised debates and ritualised imprecations to the gods can be a good guide as to whether normative or ‘legal’ behaviour is in evidence, the language used in such contexts is at least as important and could also be found beyond the *agora* or *dikastērion*.<sup>54</sup>

This is not to say that such rules can necessarily be easily collected or codified, especially when one is considering a culture of ‘oral law’. Rules also need to be adaptable to

---

<sup>46</sup> Conley, J. & O’Barr, W. (1998, pp. 2-12 & 131), cf. Llewellyn & Hoebel, (1941, pp.41-42)

<sup>47</sup> Willi, A. (2007, p.72)

<sup>48</sup> Llewellyn, K. & Hoebel, E. (1941, p.20)

<sup>49</sup> The ability to ‘transform’ a dispute by articulating it in a different way is a vital means by which resolution can be achieved and intractable conflicts prevented in human societies. By moving emphasis from the personal, emotional wrong and describing it in sanctioned terms, the process can be channeled and modes of resolution advanced. Humphreys, S. C. (1985, p.245), Conley, J. & O’Barr, W. (1998, pp.78-97). As we shall see, the Greek emphasis on procedure in written law, and their oral normative language for articulating promissory oaths, *gnōmai* and dispute resolutions facilitates and directs this process showing a cultural awareness of its value in settling conflicts.

<sup>50</sup> Pospíšil, L. (1971, pp.44-95), Roberts, S. (1979, pp.53-72)

<sup>51</sup> Llewellyn, K. & Hoebel, E. (1941, p.41), Conley, J. & O’Barr, W. (1998, pp.86-97)

<sup>52</sup> Willi, A. (2007, p.72)

<sup>53</sup> Willi (2007, pp.51-53) distinguishes between language and register when discussing whether Greek legal diction can be considered ‘technical’ and notes the inconsistencies in legal terminology that reveal the everyday nature and resistance to technocratic abstraction of Greek legal speech and writing while still remaining sufficiently unambiguous for the articulation of precise legislation (pp.72-78). For the purposes of this thesis, both register and terminology will be essential, as specific legal terms will give insights into key concepts of Greek normative systems, while the syntax of Greek diction will be important in understanding how norms acquire their force.

<sup>54</sup> See pp.238-49

suit a variety of situations, contexts and social conditions and the value attached to consistency may vary considerably over time or between communities. The nature of our sources and the different normative systems of Greek *poleis* in this period mean that we should not necessarily expect their rules to amount to an easily recited or recorded ‘code’ like that found in the Icelandic Grágás,<sup>55</sup> though as we shall see, the ability to create complex collections of rules is a feature of both Greek normative speech and writing. Rather, we should look for a language that provides a semantic, syntactical and psychological framework for people to formulate accepted rules of varying complexity and impress them on an audience. For the purposes of this thesis, one helpful distinction will be between descriptive norms which praise or condemn actions in line with idealised, accepted or prescribed standards, and prescriptive norms, which set out how one should behave in a given situation and take the form of either commands or casuistic conditional expressions that define the consequences of actions. While descriptive rules that align actions to the Greek sense of ‘justice’ will be valuable for understanding the expectations they had around judicial behaviour, it is their prescriptive laws that create the precise imperatives and layers of procedural detail that make their legal texts so distinctive and which will help us identify the forms we might expect from their ‘oral laws’. By identifying such language and observing its application in the extant normative discourse before written laws existed we may understand what kinds of rules the earliest Greek *poleis* were writing down, how they were being composed, what they were designed to achieve, and the types of norms that remained unwritten.

In order to understand how such normative diction worked in practice, it is also important to consider its articulation of both substantive and procedural rules, as this will show how the Greeks used language to regulate both society as a whole and the institutions that governed it. Substantive rules outline the rights and expectations of individuals in wider society including the forbidding of crimes and torts, and setting out the rights of individuals to perform legal acts such as making contracts, entering into marriages, prosecuting cases or dividing inheritances. Procedure deals with the way that judicial processes function and thus govern the conduct of individuals in courts, the power conferred on those in authority and the imposition of penalties.<sup>56</sup> As we shall see, the Greek terms *themis*, *dikē* and *nomos* can be used for both forms of rules, including straightforward provisions governing behaviour, the

---

<sup>55</sup> Gagarin, M. (1986, pp.9-13, 131-32; 2008, pp.27-38)

<sup>56</sup> Pospíšil, L. (1971, p.1), Gagarin, M. (1986, pp.2-15, 82-94), Foxhall, L. & Lewis, A. D. E. (1996, p.3)

rules that prescribed who should have a role in a given procedure and the decisions that issue from the institutions of early *poleis*.

While the distinction between substantive and procedural helps us to consider the different types of rules in a normative system, we will find that there is some ambiguity in this relationship as rules can often contain elements of both, since a rule of procedure may superficially resemble a substantive one and substantive rules are often implicit in rules detailing legal procedures.<sup>57</sup> Hart's description of law with its use of a wider understanding of legal 'procedures' and the important observation that such binary oppositions must work in tandem is therefore an important corollary to this distinction and his focus on the needs of laws can help reveal the subsets within different norms and the power that they rest on. To address law's key imperatives in positive ways as well as negative, Hart proposed an understanding of law that combined primary rules which provide a framework for expected behaviour, with secondary rules which empower institutions, procedures and also individuals to perform legal acts<sup>58</sup> or to adjudicate disputes.<sup>59</sup> Hart identified three problems with the notion of normative systems based purely on substance which were the uncertainty that a given rule would be enforced as a law or that a legal act be recognised as lawful, the need for mechanisms that allow legal rules to be changed and for individuals and institutions to have the power to evaluate competing claims and enforce their rulings. These three difficulties could be resolved, he argued, by subdividing secondary rules into three types: rules of recognition, rules of change and rules of adjudication.<sup>60</sup> These are useful in helping us categorise the rules we find in Archaic Greek texts, not only in order to define the features that might be considered 'legal' but also to understand the functions they had in the normative discourse. By stating the importance of secondary rules and recognising their role in empowering individuals to perform legal acts or consent to the rule of law, he makes space for the more positive applications of law as well as the capacity of its procedures to wield power and punish offenders. Moreover, his concept of legal 'procedures' allows for the consideration of normative language that helps outline the operation of judicial or dispute-

---

<sup>57</sup> Harris, E. M. (2010, pp.5-9)

<sup>58</sup> E.g. contracts, marriages and wills which may be officiated to a greater or lesser extent by authority figures but which are primarily made by private individuals.

<sup>59</sup> Hart, H. L. A. (1961, pp.79-99) – this theory is itself a development from work by earlier legal positivists like John Austin whose belief that law is a product of sovereign powers that create rules and wield force has often been characterised as 'orders backed by threats'. Hart, (1961, pp.6-17), Sealey, R. (1994, pp.6-8)

<sup>60</sup> Hart, H. L. A. (1961, pp.91-99)

resolution processes without always having to fit them into the categories of ‘substantive’ or ‘procedural’.

When written laws enter the archaeological record, they clearly show the existence of rules that comply with Hart’s definition, but even in poetry before this innovation, we find tantalising glimpses of the interactions between primary and secondary rules and the normative language for expressing them. The existence of institutions for adjudicating disputes in Homer and Hesiod necessitates both Hart’s ‘primary rules’ for them to uphold and ‘secondary rules’ of recognition, change and adjudication for them to use and abide by,<sup>61</sup> whether they are only implicit in the accepted behaviours described by the poet, or are expressed in a variety of identifiably normative modes of speech. By analysing the speech of those giving advice or participating in debate we can see the types of norms that were understood by audiences, both formal and informal, and the applications of a formulaic language for articulating correct behaviour and the consequences of failures to comply, both in disputes and in wider society.<sup>62</sup> In particular, we shall find that the concepts of *dikē*, *themis*, *kosmos* and *nomos* can be used descriptively to outline rights and obligations – both primary and secondary, while more prescriptive, consequential language can be found not only in the language of specific laws, but also in oaths, promises and threats and may well have been a form that adjudicatory settlements took.<sup>63</sup>

### *Law in Society*

The ability to consider law as not only rules, but also its attendant actions and social patterns is important because, while law is often articulated as an abstract ideal or a series of accepted rules, it has very real consequences for the way individuals and societies behave and the ways communities respond to aberrant activities.<sup>64</sup> Consideration of the contexts in which these rules were articulated is therefore going to be essential, especially when distinguishing between legal rules and rules of morality, religion or etiquette in societies where written laws did not exist, contained gaps or were not necessarily subject to judicial enforcement. The legal realism of the anthropologists Llewellyn and Hoebel, and the subsequent developments of Leopold Pospíšil will be particularly valuable to this study as their work is derived from observations of a number of contemporary or near-contemporary

---

<sup>61</sup> Thomas, R. (2005, p.57)

<sup>62</sup> Conley, J. & O’Barr, W. (1998, pp.6-13, 129)

<sup>63</sup> Sealey, R. (1994, p.91)

<sup>64</sup> Humphreys, S. C. (1985, p.251), Llewellyn, K. & Hoebel, E. (1941, pp.22-29)

cultures and engages with phenomena which are helpful in piecing together what we find in the archaeology and extant literature of archaic Greece.<sup>65</sup>

Llewellyn and Hoebel's methodology in '*The Cheyenne Way*' with its analysis of the norms and dispute-resolutions of the Native American Cheyenne is especially valuable to this thesis for its work on identifying 'law-stuff' in an oral culture which can be extrapolated across both Archaic poetic norms and written law, and throw into relief their common features and the unique contributions that arose from inscribing legislation. They identify three primary manifestations of law: *ideological* norms which describe the ideals of a society and act as a standard by which behaviour can be judged, *descriptive* norms which deal with accepted practice within a society and patterns of behaviour, and *trouble-cases* where we can see how disputes are resolved through the procedures and precedents that arise from them.<sup>66</sup> This fits with what we observe in Archaic Greece where the abstract notions of *dikē*, *themis*, *kosmos* and - from the 6<sup>th</sup> century onwards – *nomos* suggest an ideological yardstick for understanding their norms, whether connected with accepted practice, divinely sanctioned rules or the norms of the *polis* and can be applied descriptively to praise or condemn specific behaviours,<sup>67</sup> while the language of procedures and consequences can reveal the ways disputes are resolved by communities and navigated by litigants.

Pospíšil's definition builds on this work by defining law in terms of what it needs to achieve in order to function effectively and considers ethnographies of a number of societies to test his observations.<sup>68</sup> He describes four constitutive criteria of law - authority, intention of universal application, *obligatio* and sanction: laws need to stem from and be upheld by authority-figures and leadership structures, they must be consistently and fairly applied and they describe rights or obligations which are supported by penalties if they are not fulfilled.<sup>69</sup> This provides a strong foundation for analysis as each criterion can be observed in both linguistic and practical terms and provides a simple means of testing whether language or behaviours can be considered to be legalistic. Moreover, this definition allows space not only for the ideological and descriptive norms identified by Llewellyn and Hoebel, which provide authority, but also recognises prescriptive and procedural rules as norms that are not solely the preserve of 'trouble-cases', but have the ability to consistently communicate *obligatio* and

---

<sup>65</sup> Harris, E. M. (2004, p.22), Donovan, J. M. (2008, pp.123-26)

<sup>66</sup> Llewellyn, K. & Hoebel, E. (1941, pp.20-21)

<sup>67</sup> Ostwald, M. (1986, pp.93-129), Ober, J. (2005, pp.394-98), Gagarin, M. (2008, p.91)

<sup>68</sup> Pospíšil, L. (1971, pp.11-37) Donovan, J. M. (2008, pp.123-24)

<sup>69</sup> Pospíšil, L. (1971, pp.44-95)

sanction both within disputes and outside of them. Harris has demonstrated that the casuistic diction of Athenian legal inscriptions, with its universal hypothetical protases, the sanctions prescribed in their apodoses and the authoritative social structures behind their enactment and enforcement, fulfils Pospíšil's four criteria.<sup>70</sup> In order to understand the ways that legislation of the type found in Classical *poleis* could have been created it therefore remains for us to demonstrate whether the same components can be found in inscriptions elsewhere in Greece and which of them can be identified in earlier poetry or even texts from elsewhere in the Eastern Mediterranean.

The public forums and the attendant rules, hierarchies and social structures in the judicial and legislative organs of Greek *poleis* throughout the Archaic and Classical periods, suggests that they relied on community and divine sanction to maintain their credibility, and that this was an important component of the Greek understanding of 'justice'. The vocal engagement of the crowds gathered in *agorai* described in Homer and the capacity for leaders to have their decisions praised as 'straight' (*itheiai*) or criticised as 'crooked' (*skoliai*) in both Homer and Hesiod suggests that public pressure was an important force in ensuring the perceived consistency of decisions and enforcement of the community's rules.<sup>71</sup> Likewise, the frequent references to the gods, the *polis*, its *ethnos* or its representative bodies in the enactment clauses of legal inscriptions or to rules regulating the conduct and parameters of an official's position also imply an expectation that Greek legislation and judicial procedure were held to the standards of the *polis* as a whole.

A sense of 'justice' or 'fairness' is an important component in many social systems, and often has a role in regulating behaviour, encouraging acceptance of rules which maintain society's 'positions of relative equality or inequality' or in agitating for them to change.<sup>72</sup> Alongside the descriptive uses of *dikē*, *themis* and *kosmos* in archaic poetry we also find prescriptive statements in the form of normative *gnōmai* which likewise point to both a sense of customary consistency and the timelessness of justice that conforms with the laws of nature. While questions are occasionally raised about potential conflicts between written law and divine justice,<sup>73</sup> in practice they are overwhelmingly seen as complementary facets of a normative system that sees written laws as human expressions of a consistent normative

---

<sup>70</sup> Harris, E. M. (2004, pp.21-22), see *Chapter 3*

<sup>71</sup> Roebuck, D. (2001, p.87) cf. Pospíšil, L. (1971, p.4)

<sup>72</sup> Hart, H. L. A. (1961, pp.157-67), Donovan, J. M. (2008, pp.130-31, 247-53), Humphreys, S. C. (1985, pp.252-53)

<sup>73</sup> cf. Sophocles *Antigone* 449-55, cf. 368-70; Arist. *Rhet.* 1.15.4-5, *Pol.* 1287b



continuum,<sup>74</sup> and demonstrate their ‘intention of universal application’, *obligatio* and sanction through their use of prescriptive casuistic rules that provide clear penalties for exceeding the limitations of the law, but nevertheless recognise the nuances and strata of their *polis*’ social system.

It is also important to consider the relationship between laws and other forms of normative discourse and behaviour. Here, too, Pospíšil’s definition is helpful, as it allows for a variety of different normative actions to be brought together into a society’s regulatory framework: an important feature when considering the evolution of law in Archaic Greece, where, as we shall see, religion and custom are integral to the composition, application and power of law. That said, we must also acknowledge the distinctiveness of law as a form of normative language and behaviour and the way this developed, as written law with its acknowledged – albeit sometimes mythologised – human sources began to emerge. Donovan has criticised Pospíšil’s lack of recognition of the separate role of religion as a force for social control in this definition, preferring instead to view law as distinct from religion, custom and etiquette in order to separate it from these other normative drivers through its role in safeguarding ‘fairness’.<sup>75</sup> This position is especially valuable in seeking to define law and separate it from these other social forces, and to consider the complex and evolving interplay between rules, disputes and other forms of social control. As we shall see in Chapter 1, religion, kinship and social status form important components of the normative systems of the early *polis*, underpinning their abstract expectation of ‘fairness’ and creating many of the structures associated with ‘legal’ activity. However Donovan’s distinction between these norms and true law requires us to look specifically at the responses of communities to disputes or infringements and the articulation of rules that conform to the ideal of fairness for their prescriptive and persuasive force in order to differentiate legal behaviours even where they are bound up with other forms of rules and social organisation. In Chapters 3 and 4 we shall see how *poleis* combined such rules with their sources of normative authority into texts which made complex legal procedures more permanent, coexisting and interacting with the Greeks’ sense of justice as their legal culture evolved and their expectations regarding religious behaviour, kinship interactions and status groups adapted along with it.<sup>76</sup>

---

<sup>74</sup> cf. Thuc.2.37.3; Aeschin 3.199-200 (*see Chapter 4*), Thomas, R. (1996, p.11), Harris, E. M. (2004, p.20; 2006b, pp.163-65), Humphreys, S. C. (1988, p.473)

<sup>75</sup> Donovan, J. M. (2008, pp.129, 247-53)

<sup>76</sup> Lanni, A. (2006, pp.15-24; 2016, pp.80-82), Humphreys, S. C. (1978, pp.131-34, 194-208, 1986, pp.57-91)

### *A Working Definition*

This inquiry will require a definition that allows us to recognise legal language and behaviour when we can see it in poetry that pre-dates written law, and in written legislation and the discourses that grew up around it. This thesis shall therefore consider law to be the generally accepted, prescriptive norms of a society that direct and restrict behaviour through both substantive and procedural rules, and which pertain to matters that can be disputed in a formalised resolution forum. In order to be effective, such rules must be articulated in a form that enables them to be recognisable, enforceable and authoritative, supported by regulatory institutions for adjudicating disputes and upholding their provisions, and achieve widespread acceptance in a society's normative culture. It is the distinctive features of formalised, coercive language, normative institutions and sources of authority which will provide the evidence for a culture of 'oral law' in our sources from those that pre-date the advent of written laws to those which provide evidence of legal codes and the complex judicial and law enforcement systems of the 4<sup>th</sup> century *polis*. By understanding these fundamentals and identifying how they shape individual 'oral laws', we can see how they functioned to create order in societies that did not have recourse to written law, provided the frameworks of rules and the language to compose the earliest written laws, and continued to exist symbiotically with complex written legislation.

Since this definition is very broad in its scope, we cannot expect every source to conform to every aspect of it and so it will be necessary to return to the definitions of Hart, Pospíšil, Donovan, Llewellyn and Hoebel in order to identify the specific criteria that an individual source might be comprised of both in its explicit use of normative language and in the inferences one may reasonably make. The legal realism of Pospíšil's criteria of authority, consistency, *obligatio* and sanction, will be an important starting point for identifying law from both the beliefs and behaviours alluded to in normative speech and descriptions of adjudicatory institutions. Llewellyn and Hoebel's combination of 'trouble-cases', ideological and descriptive norms will help in identifying places to look for normative and legal discourse in the wider normative cultures of the evolving Greek *poleis* and Donovan's distinction of law from other areas of normative behaviour will help to situate law in the wider cultural context that both supports it and is itself shaped by it. Within these areas of discourse, we shall find that the categorisation of norms as descriptive or prescriptive and Hart's notion of primary and secondary rules allows for the identification of law in normative

speech, incorporating subtle distinctions between the substantive and procedural applications of rules and the different components from which they are composed.

## Sources and Methods

Normative practices and language must have existed before the appearance of legal inscriptions, and written law appears to have developed and evolved in a cultural context that included oral means of transmission, and which valued the traditions and beliefs that came before it.<sup>77</sup> There has been much discussion of ‘oral’ or ‘pre-literate’ law in Archaic Greece in recent decades but none of those who have advocated for its existence has looked in detail at the precise forms it might have taken or considered the full range of different modes of speech and forums that the rules behind the concept of law could have been used in. This thesis will therefore examine both the social frameworks of the early *poleis* and their use of language to create effective, clear and persuasive norms both before the creation of written law and as legal inscriptions became a feature of the landscapes of the emerging *poleis*. It will aim to describe the networks of rules that Greeks knew or were aware of in order to understand how these may have evolved between the 8<sup>th</sup> century BCE and the 5<sup>th</sup> using, as far as possible, terms and categories that emerge from analysis of Greek normative language. By providing a more detailed view of the syntax of law, considering it alongside terms the Greeks themselves were using, and its practical applications, it will consider the usages of this diction in earlier contexts. By isolating individual instances of rules or collections of rules in the form of oaths and *gnōmai*, it will seek to understand their normative value and their function alongside other registers as both the kinds of customary ‘oral laws’ that existed before *poleis* began to inscribe their rules and within the legal systems that developed after written law emerged.

The primary evidence for the purely oral normative systems from which written law developed is, almost by definition, extremely scarce and unreliable. Legal inscriptions are often fragmentary and contain very little information about the process by which they were created, the context in which they were originally used<sup>78</sup> and nothing about what came before. The stories that grew up around ‘lawgivers’ are highly mythologised and very few of the laws that they are said to have passed have survived in their original form.<sup>79</sup> Legendary legislators like Solon and Drakon are known to have written laws on wood (*axones* and

---

<sup>77</sup> Hölkeskamp, K.-J. (1992, p.60)

<sup>78</sup> Thomas, R. (2005, p.43)

<sup>79</sup> Hölkeskamp, K.-J. (1992, pp.52-60), Thomas, R. (2005, pp.44-45)

*kyrbeis*) which are unlikely to have been preserved, but probably survived into later antiquity when they were deemed to be worthy of republication or piqued the interest of antiquarians meaning that those that do survive have been passed down selectively and not always accurately.<sup>80</sup> These legends and the lyric, elegiac and iambic poetry of the time of the earliest written laws exhibit similar concerns to those found in the earliest legislation, but they are often incomplete in their preservation, rarely present a balanced picture of a given *polis* at a given time and are almost never attested for *poleis* in which we have evidence of contemporary legal inscriptions.<sup>81</sup> The problems are even greater when attempting to identify the normative language that was in use before written law. Here we are largely confined to the hexameter poetry of Homer and Hesiod which contain only glimpses of fictionalised societies which can almost never be attributed to a particular time or place, offering a jumbled mixture of features, formulas and beliefs accrued over a period reaching back into the Bronze Age and from a variety of Greek speaking and Near Eastern sources.<sup>82</sup>

Despite these challenges, the widespread appeal, general acceptance or practical use of these sources in Greek society means that they must have included language and social structures that were at least recognisable to their audiences, and can therefore provide useful information about the normative beliefs, institutions and dictions that contemporary audiences were accustomed to. Inscriptions may not give us the complete picture of any community's legal system, but their syntax tells us a lot about the existing types of rules that were informing their written laws and the changes that came about as a result of writing them down. Legal inscriptions, in order to be acceptable and useful to societies must have been rooted in their existing normative culture and we will see that they rely extensively on earlier procedures, solutions to problems and sources of authority.<sup>83</sup> Many laws include prescripts and postscripts which appeal to both the political and the divine, suggesting the importance attached to identifying where a law's power came from and both the psychological and institutional basis for this form of social control.<sup>84</sup> Moreover, the subtexts and omissions of a number of legal prescripts, provisions and terms can give indications of the beliefs, expectations, substantive

---

<sup>80</sup> *Ath. Pol.* 7.1, Plut. *Sol.* 25, Gagarin, M. (2008, pp.43, 74; 1981, pp. 21-2), Thomas, R. (2005, pp. 44-5), Sickinger, J. P. (2004, pp. 94-5), MacDowell, D. M. (1978, p. 43)

<sup>81</sup> Gagarin, M. (1986, p.52), Roebuck, D. (2001, pp.93-103), Thomas, R. (2005, pp.44-45), Papakonstantinou, Z. (2008, pp.105-126)

<sup>82</sup> Bachvarova, M. R. (2016, pp.397-417), Raaflaub, K. A. (2000, p.26), Roebuck, D. (2001, p.12), Papakonstantinou, Z. (2007, p.83) *See pp.40-43*

<sup>83</sup> *See pp.185-211*

<sup>84</sup> Lanni, A. (2016, pp.2-6, 80-118)

rules or procedures that continued to be orally communicated, customarily observed or simply understood.

In order to understand the earliest development of written law, we must consider the issue of what constitutes ‘law’ in a culture that makes no use of normative writing and how this translates into their earliest normative texts. The poetic works of Homer and Hesiod are the only contemporary sources for scholars aiming to catalogue different methods of dispute resolution that were known to the Greeks before the advent of written law.<sup>85</sup> While these texts present disputes that are probably an idealised amalgam of features that cannot be taken as realistic depictions, they are nonetheless valuable, as the tantalising glimpses they present must have chimed with or at least been recognisable to their original audiences in the 8<sup>th</sup> and 7<sup>th</sup> centuries BCE.<sup>86</sup> Both poets and their elite patrons have been shown to be highly influential in the linguistic development of their peoples, and this appears to have been especially true of Ancient Greece,<sup>87</sup> where traditions of marked speech, poetry and song had the ability to and, more importantly, were often perceived to preserve older knowledge and modes of expression and thus were critical in the communication and acceptance of rules.<sup>88</sup>

While analysis of these texts will not necessarily produce the norms of a specific community at a given time, it will nevertheless enable us to build a broad picture of an evolving tradition that created and assimilated new rules from different times and places to suit the needs of a variety of different social groups. Idealised descriptions of normative dispute resolution forums allude to specific details suggestive of institutions, rules and language that would have

---

<sup>85</sup> MacDowell, D. M. (1978, pp.21-23), Gagarin, M. (1981, pp.5-18; 1986, pp.19-41), Sealey, R. (1994, pp.91-105), Roebuck, D. (2001, pp.52-88)

<sup>86</sup> Finley, M. I. (1978, pp.43-45, 71-122), Humphreys, S. C. (1988, pp.466-70), Sealey, R. (1994, pp.91-31), Thür, G. (1996, pp.59-71), Raaflaub, K. A. (2000, pp.26-28), Roebuck, D. (2001, pp.52-88), Gagarin, M. (2008, pp.13-38), Morris, I. (2009, pp.70-77), Ulf, C. (2009, pp.96-98), Ober, J. (2015, pp.110-22), Bachvarova, M. R. (2016, pp.402-16)

<sup>87</sup> Bachvarova, M. R. (2016, p.212) has especially noted the importance of poets and members of elites as influencers of people’s everyday speech and this must have been especially true in the normative sphere, with selected core beliefs reinforced by both poets and elites, reflecting accepted norms and refracting them to suit their purposes.

<sup>88</sup> Thomas, R. (1992, pp.101-17) The memorability of poetry makes it a highly effective medium for communication across significant tracts of time and this is certainly true of the earliest records of Greek poetic traditions which seem to incorporate both language and details that have been passed down from several centuries before (Bachvarova, M. R. 2016, pp. 396-417). This was readily recognised by early archaic poets who present their knowledge and the power of their words as a product of their connection with the divine, and value it for its ability to transmit information accurately across time and space. (Mackie, H. 1997, pp.85-87) cf. *Od.*8.491, 12.186-91, *Th.*27-28, 56-63.

resonated with their contemporary audiences at least enough that they could make sense of them without further clarification. Hesiod's *Works and Days*, probably composed some time after the Homeric epics, but following much of their metre and language, seems to have been more contemporaneous in its focus and to echo the concerns that were emerging in Greece during the 8<sup>th</sup> and 7<sup>th</sup> centuries through its collections of norms and allusions to a dispute between the poet and his brother. Therefore, by comparing these different depictions of disputes, rules and anxieties, we can find traces of the normative landscape of Archaic Greek *poleis*, the issues that mattered to them and the problems that were emerging before the arrival of written law.

Moreover, the normative language found in persuasive speeches, expressions of approval or disapproval in Homer and the plethora of *gnōmai* in Hesiod's didactic, also give useful indications of the diction used to express rules at this time and the traditions of wisdom that they were rooted in. The poems of Homer and Hesiod show a highly developed understanding of rhetorical language with variations of technique, form and tone, and a sense of rhetoric as a skill that can be taught or evaluated.<sup>89</sup> In both Homer and Hesiod, rhetoric and poetry are combined in the concept of *epos* and the association of song with wisdom and divine knowledge suggests that the beliefs, arguments and modes of expression in both spoken art-forms were fundamentally linked.<sup>90</sup> In particular the concept of 'justice' found in such sources and both the abstract concepts of *dikē*, *themis* and *kosmos* by which behaviours are judged, and the more practical norms described as *themistes* or *dikai* suggest an awareness of a developed oral normative culture that underpinned both their sense of social order and the institutions that kept it.<sup>91</sup> The association of poetic traditions with rhetorical discourse and the sense of both abstract and practical 'justice' suggest that Greek poets and their audiences were conscious of the power that their words had and attached great importance to the elegant and memorable vocabularies of words, formulas and syntax for expressing their values.

The rhetorical passages in our poetic works and the patterned diction used to articulate,

---

<sup>89</sup> Knudsen, R. A. (2014, pp.4-14)

<sup>90</sup> Walker, J. (1996, pp. 243-51), Stoddard, K. B. (2003, pp.4-14), Roebuck, D. (2001, 73-75), Roth, C. P. (1976, pp.332-37). Associations between *basileis*, singers and the gods can be seen in Hesiod *Theogony* 80-103 and Homer with the Homeric use of the epithet *theios* ('divine'). The formula *theios aoidos* (the godlike singer) occurs once in the *Iliad* (18.604) and twelve times in the *Odyssey* (1.336, 4.17, 8.43, 8.47, 8.87, 8.539, 13.27, 16.252, 17.359, 23.133, 23.143, 24.439) and the appearance of a very similar formula *theiou basileos* three times in the *Odyssey* (4.621, 4.691, 16.335) suggests that both singers and rulers rely on a connection with the divine in order to be successful in their roles.

<sup>91</sup> See pp.101-8, cf. Appendices 1 & 2

repeat and compose rules will therefore provide valuable indications of the types of norms that were in use and the ways in which they were expressed. In particular the use of casuistic formulas with indefinite clauses and conditionals that enable the consequences of choices and actions to be formulated in both general and specific terms, and which allow rules to be collected into complex compilations or multi-stage procedures in both normative *gnōmai* and solemn oaths (*horkia pista*) of agreement. The striking similarity of this language to later written laws and its evident utility in creating collections or sequences of rules, even in this early poetry, suggests that this was a feature of oral normative culture that was translated into inscriptions rather than an invention of legal scribes or a foreign import, and was valued as a means to create rules and agreements both before the advent of legal text and after.

As written laws became integrated into the normative cultures of Greek *poleis*, their interaction with other forms of rules and the ways they were applied to resolve societal issues, both in theory and in practice, are worthy of investigation. While our sources confine us almost exclusively to Athens, the works of her orators and philosophers will be extremely useful in seeing how both laws and poetic maxims were used alongside one another as evidence of the speaker's position and were both accepted parts of a citizen's moral education.<sup>92</sup> This can be seen in the explicit acknowledgement of their instructional value in philosophical works,<sup>93</sup> the direct use of both poetic and legal material in persuasive speeches and the use of Homeric and Hesiodic style, form and wisdom in works attributed to 'lawgivers'<sup>94</sup> which themselves grew into traditions that shaped the societies of Greek *poleis*. Moreover, while 'lawgiver' legends present many historical problems, their very existence along with the deeds, aphorisms and poetry attributed to them and the use of Homeric and Hesiodic material alongside them is itself interesting, as they further demonstrate how written law was becoming embedded in Greek culture, not only through its monumental presence in public inscriptions throughout the *poleis* of the Archaic and Classical periods, but also through the tales that grew up around the person of the lawgiver that gave the law both its *raison d'être* and an additional means to extend its reach into the community.

Much can therefore be gleaned from comparing the components of legal inscriptions, the sources of their authority and their language with similar texts within the Greek world, but this can also be supplemented with normative texts from neighbouring cultures, as the

---

<sup>92</sup> Ford, A. (1999, pp.231-40), Kapparis, K. (2019, p.34)

<sup>93</sup> Cf. Plato *Prot.* 325c-326e, *See pp.205-11, 238-49*

<sup>94</sup> Anhalt, E. K. 1993, pp.71-6, 118-19; Humphreys, S. C. 1988, p.468; Murray, O. 1990, p.142

Greek *poleis* in general and written law in particular did not emerge in isolation, but in interaction with other civilisations, especially in Anatolia and the Levant. The written and oral legal traditions of these societies offer interesting parallels with the normative traditions of the Greek world and may well have influenced the emerging practices of writing laws down in Archaic *poleis*, showing an interaction between spoken traditions and legislation and demonstrating the ways that other societies of the Eastern Mediterranean made this transition.<sup>95</sup> While several comparisons have been made between the collections of laws and normative traditions found in Ancient Greece and texts like the Babylonian *Codex Hammurabi*,<sup>96</sup> the emphasis has primarily been on the differences between these societies and what their laws show about their traditions or political systems. This thesis will use the *Codex Hammurabi* to understand how traditional language and organisation could permeate into written laws, but will also consider the normative sections of the Hebrew Bible to show how a culture far closer to Archaic Greece, historically, geographically and socially could develop similar norms and transmit them across large swathes of space and time.

This thesis will aim to show the ways that spoken norms and beliefs of the types found in orally composed poems provided much of the authority behind the first instances of written law and also to understand the normative diction that underpinned it. It will use this to examine the continued relationship between law and oral culture through its operation alongside religion, education, poetry, legend and rhetoric in shaping the normative fabric of the early *poleis*. It will be argued that the combination of religious and community authority behind legal inscriptions, and the kinds of institutions that enabled it to function had deep roots and can be glimpsed in the descriptions of *poleis* in Homer, where it can be observed in the abstract understanding of *dikē* and *themis*, the mixture of divine and human consequences for oaths or failing to abide by the tenets of *gnōmai* and the rules governing Archaic *agorai*, and may even have stretched back to the ways that smaller villages governed their internal affairs under the Mycenaean palaces.

The language of law and its effects are also extremely valuable for reconstructing the development of normative culture in the Archaic and Classical periods. Casuistic rules can be expressed with indefinite constructions ‘whoever commits a crime then this shall be the consequence’, indefinite conditionals ‘if anyone...’ or more specific conditionals ‘if x...’

---

<sup>95</sup> Westbrook, R. (2015, pp.58-68)

<sup>96</sup> Gagarin, M. (2008, pp.146-59), West, M. L. (1997, p.311), Thomas, R. (1996, pp.11-12), Thür, G. (1996, p.70), Sealey, R. (1994, pp.30-36), Goody, J. & Watt, I. (1963, pp.311-20)



adding texture, definition and variety both to general rules and more precise subclauses. Moreover, casuistic diction is not the only form of legislation that we find, but there are also rules expressed simply as commands which either impose obligations or forbid certain actions. The features of this syntax and structure allow for complex sequences of rules to develop which fall into a number of different categories depending on the type of offence and its attendant difficulties.<sup>97</sup>

The diction and normative foundations of written law will be compared with the discourse of justice and the language of *gnōmai* and oaths in Homeric and Hesiodic poetry to identify the role that such language had in the expression of rules and agreements before our earliest legal inscriptions and the ways in which it continued to complement them. This thesis will argue that *gnōmai* were a fundamental part of the normative diction of Greek *poleis* in the 8<sup>th</sup> and 7<sup>th</sup> centuries and already demonstrated the capacity to create complex sequences of rules that could be preserved and repeated through oral transmission. It will also investigate uses of similarly formalised diction to create new collections of rules in the form of oaths, curses, promises and threats, and consider how a variety of gnomic expressions informed a wider discourse and understanding of the notion of justice which supplemented and informed the ways in which rules were conceptualised and applied. Moreover, by referring to comparative material from the neighbours of the ancient Greeks, it will seek to situate the development of written law in a wider Mediterranean context and explore the role of parallel traditions of ‘oral law’ in the evolution of this technology.

These similarities and what they suggest about the relationship between oral norms and the evolution of written law must also be considered in terms of their wider social and cultural context and the impact written law had on the normative traditions of Greek *poleis*. Written law seems to have appeared over a wide area and probably at different times in different *poleis*. That said, it appears to have spread fairly rapidly and there are several features in the ways in which legislation is written down that were common between *poleis*. We find written laws with similar normative syntactical structures in both Crete and the Argolid in the 7<sup>th</sup> century, and by the early 6<sup>th</sup> century the idea is especially widely distributed in both the surrounding areas of Crete, among the Lokrians, and in places where colonies had been established. The *poleis* of this period also seem to have shared similar concerns, being keen to define procedures in issues that commonly caused disputes like inheritance, kidnapping and bodily harm, and to limit the powers of growing numbers of

---

<sup>97</sup> See Chapters 3 & 4

officials.<sup>98</sup> The terminology for expressing these concerns and norms pertaining to them appears both to have remained rooted in the traditional diction that we find in Homer and Hesiod, but also to have evolved in a manner that suggests that this continued to be the language of the ordinary citizen. It therefore seems likely that law remained a phenomenon of the whole community's normative culture rather than developing the trappings of a more 'technical' discipline.<sup>99</sup>

This thesis will also examine the effects writing had on the normative cultures of Greek *poleis*, considering what inscriptions legislated on, the ways they used language to create law, the effect this had on the way that courts and officials could operate and the new traditions and values that were spawned by their appearance on monuments and frequent discussion in courts, philosophical discourse and education. Inscribing rules enabled complexity to be more precisely fixed and repeated, while the monumentalisation of law made imposing statements to the peoples of Greek *poleis*, and this changed the relationship between people, *polis* and officials. Tales of lawgivers attributed to this time period tell of social unrest, and states were becoming more involved in regulating economic activity and reshaping social structures.<sup>100</sup> Early inscriptions suggest that official writing in general and written law in particular seem to have been key components of this process of state intervention and standardisation,<sup>101</sup> providing a unified voice for the *polis* as a whole, embedded in the physical fabric of the city and allowing it to direct the behaviour of its citizens through its complex, nuanced and repeatable legislation.

Written law also created a need to interpret and understand the thinking behind their legislation and gave rise to traditions of lawgivers credited with their creation, which in turn became cornerstones of each city's identity and relationship with law and writing. Thus, written laws were not only shaped by the discourse of law, but also entered into a dialogue with oral norms, institutions and beliefs as they passed into Greek normative culture. In doing so, they became part of the symbolic fabric of the city and spawned their own traditions which were intrinsically linked both to how they were interpreted and to the very identity of the *poleis* they were erected in.

---

<sup>98</sup> Hall, M. D. (1996, p.74), Sealey, R. (1994, pp. 61-89), Gagarin, M. (1986, pp.129-30)

<sup>99</sup> See pp.189-94 Gagarin, M. (2008, p.2), Willi, A. (2007, pp.56-79), Lanni, A. (2006, p.25), Ford, A. (1999, pp.239-55), Thomas, R. (1996, pp.25-26; 2005, p.57), Carey, C. (1994, pp.178-80)

<sup>100</sup> Morris, I. (2009, pp. 64-80), Van Wees, H. (2009, pp.444-65)

<sup>101</sup> Thomas, R. (2005, pp. 43-48; 1996, pp. 11-13), Papakonstantinou, Z. (2008, pp. 47-49), Wilson, J-P. (2009, pp. 552-53)

## The Structure of the Thesis

This thesis will begin by examining the evidence we have of the social and structural manifestations of ‘oral law’ in the Greek communities that were developing during the 8<sup>th</sup> and 7<sup>th</sup> centuries. Chapter 1 will investigate the normative and institutional frameworks in the earliest descriptions of *poleis* in order to understand the roles that the *agora*, kinship groupings, social hierarchies and religion played in regulating society and minimising conflict. It will also consider the concerns and pressures that attracted legal behaviour expressed in poetry and reflected in archaeological evidence, arguing that in addition to the common human issues of personal safety, notions of property and access to sex,<sup>102</sup> Greek epic, didactic and lyric poetry reflects particular interest in the division of inheritance and the ways in which dispute resolutions were conducted. It will do this in order to identify areas that we can expect to find normative language, procedures and sanctions, and also consider the wider Mediterranean context in order to understand why written laws came to be adopted across the Greek world from the end of the 7<sup>th</sup> century and throughout the 6<sup>th</sup>.

Chapter 2 will look at the normative language found in the earliest poetic sources in order to understand the form that ‘oral laws’ might have taken and the contexts in which they might have been used. It will examine the use of descriptive norms based around an abstract notion of ‘justice’ (*dikē*, *themis* and *kosmos*) in order to explain the basic yardstick by which behaviour was judged and the ways that Greek poets employ it as a persuasive concept to impress both divine and human social consequences for particular courses of action. It will then investigate the use of casuistic diction in poetic discourse to prescribe consequences, considering its applications in *gnōmai*, oaths, promises and threats and demonstrating that such language has both the capacity to direct behaviour and to be collected into elaborate systems of rules that can either be used to impress existing norms or formulate new agreements. Moreover, it will also examine the existence of similar patterns in collections of rules from the Near East, including the much discussed *Codex Hammurabi*, but also offering analysis of the rules from the Hebrew Bible which is generally held to have been written at a similar time to the earliest Greek laws and gives interesting insight into comparable

---

<sup>102</sup> Roberts, S. (1979, pp.101-3)

developments in a culture closer to those with which the Greeks of the early Archaic period are known to have had direct contact.<sup>103</sup>

Chapter 3 will turn to written law, dissecting it to identify its constituent parts and to understand the functions of its different syntactical components and their relationship to oral normative language. It will first argue that the different sections of laws show that similar sources of authority are drawn on across the Greek world and that these have their roots in the kinds of religious and community ideals described by Homer and Hesiod. The language of the law itself will also be examined to identify its specific types of legal syntax, their uses in directing behaviour, and the ways texts manipulate legal formulas to highlight different terms. It will also demonstrate how the syntax of law facilitated accretion, collection and organisation of rules, just as the syntax of Homeric oaths and Hesiodic *gnōmai* could be used to formulate complex normative expressions, but that inscriptions were able to monumentalise and fix rules that could become increasingly complex and could be edited, amended or replaced over time.

Chapter 4 will discuss the impact that the writing of laws had on the norms, institutions and cultural beliefs of Greek communities as it became a more established feature of the Archaic and Classical *poleis*. It will start by considering the things that written law did not change as legal writing's incorporation into Greek normative culture did not lead to any kind of professional legal culture, had minimal effects on the language used to articulate law, did not, in and of itself, revolutionise the types of penalties, procedures or officials available to these emerging legal systems, and did not cover every single area that it might have been expected to. Next it will examine the changes that *were* brought about by legal inscriptions, using the inscriptions themselves to argue that their ability to produce procedural rules with greater fixity and complexity enabled more precise regulation of officials and litigants, and to set the tariffs for monetary penalties consistently along lines of crime severity and social strata. This section will also investigate how writing affected the relationship between the *polis* as a clear source of norms alongside its institutions and officials and the ways that laws were collected, edited and replaced in different *poleis* as part of each community's distinctive and evolving legal culture. Finally, it will consider the cultural impact of written law through

---

<sup>103</sup> Walzer, M. (1994, pp.105-7), Hagedorn, A. C. (2017, pp.117-19). The value of this comparison has not been lost on Biblical scholars when considering the orality and composition of the Pentateuch (cf. Gitay, Y. (1980, pp.185-88), Person, R. F. (1998, pp.601-3), Ben-Dov, J. (2006, pp.431-51), Westbrook, R. (2015, pp.1-68)). Conversely there is much that the study of Greek normative language has to gain from the the work that has been done on the orality of the Hebrew Bible and its legal language.

the ways that orators and philosophers interpreted the law for their audiences, the perception of law as a component of a citizen's education alongside more traditional sources of morality, and the parallel traditions that themselves grew up around the creation of law and became part of the way it was used and understood.

## Chapter 1

### The Evolving *Polis* and its Normative Structures

Homer's description of the land of the Cyclopes in the *Odyssey* paints a picture of a people in a state of barbarous ignorance, lacking the things necessary for 'civilised' living and as such, it reveals the sources of social structure which Homer and his audience deemed essential for human communities to survive.<sup>104</sup>

Κυκλώπων δ' ἐς γαῖαν ὑπερφιάλων ἀθεμίστων  
ικόμεθ', οἳ ῥα θεοῖσι πεποιθότες ἀθανάτοισιν  
οὔτε φυτεύουσιν χερσὶν φυτὸν οὔτ' ἀρόωσιν,  
ἀλλὰ τὰ γ' ἄσπαρτα καὶ ἀνήροτα πάντα φύονται,  
πυροὶ καὶ κριθαὶ ἠδ' ἄμπελοι, αἳ τε φέρουσιν  
οἶνον ἐριστάφυλον, καὶ σφιν Διὸς ὄμβρος ἀέξει.  
τοῖσιν δ' οὔτ' ἀγοραὶ βουλευφόροι οὔτε θέμιστες,  
ἀλλ' οἳ γ' ὑψηλῶν ὀρέων ναίουσι κάρηνα  
ἐν σπέσσι γλαφυροῖσι, θεμιστεύει δὲ ἕκαστος  
παίδων ἠδ' ἀλόχων, οὐδ' ἀλλήλων ἀλέγουσι.

*We came to the land of the proud, lawless (athemistoi) Cyclopes,  
who, trusting in the immortal gods,  
neither cultivate trees with their hands, nor plough,  
but all things grow unsown and uncultivated,  
wheat and barley, and vines that produce  
grapes in large clusters, and the rain of Zeus makes them grow.  
They have neither council-bearing meetings (boulēphoroi agorai) nor rules (themistes),  
but they live on the peaks of high mountains,  
in hollow caves, and each one passes judgement (themisteuei)*

---

<sup>104</sup> Finley, M. I. (1978, pp.76-77), Hölkeskamp, K-J. (1992, p.61), Raaflaub, K. A. (2000, pp.25-26), Roebuck, D. (2001, p.70), Crielaard, J. P. (2009, pp.353-54)

*on his wives and children, and they have no concern for one another.*<sup>105</sup>

In addition to their lack of settled agriculture, the Cyclopes are *athemistoi*,<sup>106</sup> without the *themistes*<sup>107</sup> to give them a shared understanding of how to live and cooperate as a society. Although they live in households, they lack *boulēphoroi agorai* with their attendant hierarchies and extended kinship structures that could enable mobilisation and organisation of witnesses and supporters to contest trials or to exact retribution. To Homer, and presumably his audience too, these absences are remarkable – a sign of the Cyclopes’ barbarity - and suggest that these features were expected in civilised human communities.

The *themistes* which the Cyclopes lack, were the rules and conventions which set the social boundaries of communities and were discussed, negotiated and enforced in their dispute resolutions. Homer’s use of the noun form *themistes* (‘customs’) and the verb form *themisteuei* (‘pass judgement’ or ‘rule’)<sup>108</sup> in his description implies that this concept of justice encompasses both the rules themselves and the ways that they are applied and expressed.<sup>109</sup> The disputes (*neikea*) and the forums for resolving them presented in the Homeric hymns and epics, and in Hesiod’s didactic poetry reveal the ways in which such rules and pronouncements could be used as well as the ways they passed into traditional vocabularies of stories, songs, proverbs and registers of speech which were in themselves vibrant and potent sources of belief, instruction and identity in the Archaic Greek world. These poems describe institutionalised procedures for resolving disputes (*neikea*) which demonstrate a number of fundamental principles that enabled judges and adjudicators to be selected, individual voices to be heard and

---

<sup>105</sup> *Odyssey* 9.106-15

<sup>106</sup> Cf. 9.189, 428. When applied to humans *athemistos* and *athemistia* are used to refer to individuals who demonstrate anti-social qualities: not respecting others (*Od.*17.363 and 20.287), being excessively violent (*Od.*18.141) or alienating themselves from society (*Il.*9.63).

<sup>107</sup> Cf. *Od.*9.215

<sup>108</sup> Cf. *Od.*11.569 where Minos wields the sceptre as he sits in judgement over the dead. We also see it used in the sense of ‘oracle’ by Apollo in *HH* 3.253 (= 293) presumably carrying the sense of an authority figure sending down decrees in response to problems (cf. also *Od.*16.403).

<sup>109</sup> When used in the plural *themistes* can mean: the laws of Zeus (*Il.*1.238), which can be communicated by oracles (*Od.*16.403), justice (*Th.*235), the right to make pronouncements in assembly (cf. the formula σκῆπτρόν τ' ἠδὲ θέμιστας *Il.*2.206, 9.99), decrees (*Il.*9.156 = 298, *HH* 3.395), judgements (*Th.*85 which can be ‘crooked’ (σκολιάς) *Il.*16.387, *Op.*221 or ‘made straight’ (ἴθυνε) *Op.*9). They are closely associated with ‘justice’ (*dikē*) (cf. *Od.*9.215, *Th.*85-86, 235-6, *Op.*9). In practical terms, therefore, this thesis renders it as the accepted customs for conducting one’s life, and the powers and decisions of judges and leaders.

the community's hierarchical and kinship structures to be respected. We also find a number of key areas of dispute in Homeric *neikea* and in Hesiod's advice on the avoidance of conflict which suggest areas that were governed by substantive rules concerning how individuals should behave, but also customary 'procedural' expectations on the punishment of offenders and the conduct of trials. We can therefore look for 'oral law' in disputes resulting from fundamental issues of bodily harm, sexual access and property, but also the difficulties arising from the challenges of protecting and passing on inheritance and ensuring the proper functioning of *agorai*.

This chapter will investigate the principal sources of this normative culture, its means of inculcating and enforcing rules and the forums in which they were communicated. At this point it is necessary to confront the difficulties posed by the source material and in particular the problematic question of what can be derived from the poetry of Homer and Hesiod. The Homeric epics in particular cannot be considered as a straightforward or comprehensive account of the normative systems of the 8<sup>th</sup> century *polis*, any more than they offer a transparent window into other aspects of Greek society at any point in its evolution. These are essentially works of fiction, situated within traditions which combine objects, language and societal features from a variety of different times and places. Likewise, the didactic poetry of Hesiod's *Works and Days*, while it appears to present a more 'everyday' world, also evidently draws from a similar poetic tradition to the Homeric epics and hymns and thus presents an amalgam of features which do not necessarily present the norms and institutions of any single time or place.<sup>110</sup> Any attempt to use them as historical sources must therefore exercise extreme caution.

That said, the poems do provide hints of an awareness of a political landscape that values the *polis* as a centre for civilised living and which incorporates, understands or even assumes the kinds of norms and mechanisms that would have enabled disputes to be interrupted, transformed and resolved before the development of written law. As we have seen in the Homeric description of the Cyclopes, the poet seems to find it remarkable that they lack the rules and institutions that make a *polis* function and, while we cannot use these to reconstruct any single society, they appear to anticipate an audience that accepted and expected such rules, structures and practices in a stable *polis*-community.<sup>111</sup> *Agorai* where disputes are conducted in public, with disputants taking turns to speak and using independent third parties

---

<sup>110</sup> Rosen, R. M. (1997, pp.463-64)

<sup>111</sup> Osborne, R. (2006, pp.211-16), Raaflaub, K. A. (1997, pp.627-8)



to help adjudicate are ubiquitous in Homeric communities,<sup>112</sup> are suggested by Hesiod's didactic<sup>113</sup> and are also reflected in the architecture of the earliest *poleis*.<sup>114</sup> Moreover, rules that govern their operation or the pronouncements that issue from such meetings are also suggested by the *themistes* that Homer refers to, the expectations around the types of issues that might precipitate such formal resolutions and norms that are either explicitly expressed or alluded to through the use of specific vocabularies or enigmatic descriptions.<sup>115</sup> In particular, there is remarkable consistency in the types of topics that caused disputes and the norms and procedures<sup>116</sup> that stemmed from them. Although several terms may have changed markedly in their usage between the Bronze Age and the 8<sup>th</sup> century,<sup>117</sup> the continuity and precision of the diction used and the principles at work is striking both within the poems and in the development of written laws in subsequent centuries.<sup>118</sup> While these texts cannot describe a precise social system attributable to any particular time or place, the recurrent appearance of several key features in dispute resolutions such as their performance in public, rules about each party speaking in turn, use of independent adjudicators, and systems for maintaining order suggest that these were recognisable to audiences.

The internal consistency of the norms and institutions depicted, especially in the similes, ecphrases and descriptions that form the backdrop to the main narrative and the panhellenic appeal of the poems, are something of a mixed blessing, offering a sense of norms and practices that could be readily understood across the Greek world, but also masking the

---

<sup>112</sup> *Il.*1.54, 305, 2.93-100, 144-49, 207-398, 18.497-508, *Od.* 2.25-27, 9.171, 10.188, 12.319-40 *See pp.*46-51

<sup>113</sup> Cf. *Th.*89, *Op.*27-36

<sup>114</sup> *See pp.*46-47 Ober, J. (2015, p.29), Crielaard, J. P. (2009, pp. 351-66), Morgan, C. (2009, pp.49-54), Gagarin, M. (2005, pp. 91-93; 2004, p. 177), Thomas, R. (2005, p. 43; 1996, pp. 27-29), Murray, O. (2000, pp.236-38), Perlman, P. J. (2000, pp.59-60), Osborne, R. (1999, pp. 346-47), Hölkeskamp, K.-J. (1992, pp. 72-73)

<sup>115</sup> Raaflaub, K. A. 1997, p.629, cf. for example the commonplace situation of disputes in the *agora* implied by the simile of a judge rising for his dinner at *Od.*12.439-40, the precise details of the ecphrasis at *Il.*18.497-508 (*See pp.*48-51 *See pp.*48-51), or the very specific term (*moichagria*) used for an adultery price at *Od.*8.332 (*See p.*62 n.).

<sup>116</sup> Cf. *See pp.*61-87

<sup>117</sup> Cf. *See pp.*44-46 in particular the social structures of Greek communities appear to have changed dramatically between the Bronze and Iron Ages and so a corresponding semantic shift has taken place in terms like *basileus*, which in Homer and Classical *polis* not only seem quite distinct from one another and between communities, but also seem very different to the meaning implied by the use of the Mycenaean *qa-si-re-u* (Shelmerdine, C. W., Bennet, J. (2008, pp.294-95))

<sup>118</sup> *See pp.*61-87, 190-95

myriad societal differences that would come to characterise Greek legal systems.<sup>119</sup> While it is impossible completely to separate out or identify the origins of the phenomena presented in the tradition, some parts of the narrative, such as the similes that illustrate the story<sup>120</sup> or the vignettes presented in ecphrases,<sup>121</sup> do suggest efforts to align the poem's descriptions with the original audience's expectations and experiences of what it was to live in a *polis*.<sup>122</sup> Moreover, Hesiod, although he uses the language and traditions of Greek hexameter, has a more contemporary focus and thus can be a useful source to corroborate what we observe in Homer. While his depiction of a dispute with his brother may well be a work of fiction, the concerns that he raises in his moralising didactic poem *Works and Days* must also have resonated with audiences sufficiently to be popularised and preserved for posterity.

Scholarly opinion on the utility of these sources varies considerably, from those who reconstruct precise cultural systems from the poems to those who demonstrate considerable scepticism, and there is also a huge discrepancy in the ways that scholars extrapolate from anthropological or archaeological sources. Gagarin attributes the social world depicted by the poet very precisely to that of the 9<sup>th</sup>-8<sup>th</sup> centuries, using anthropological sources to corroborate the plausibility of his reconstructions.<sup>123</sup> Likewise Raaflaub is very positive in the reconstructions he elicits from the poems, though his view encompasses comparisons between the worlds of Homer and those of the Myenaean palaces in the second millennium BCE to explain the inconsistencies that can be found in some of the social practices of the epics.<sup>124</sup> Osborne, by contrast, is rather more sceptical, emphasising the challenges presented by attempting to separate different features and also demonstrating the ways that seemingly contradictory aspects seem to sit side by side in this fictional world.<sup>125</sup> That said, he also recognises the political awareness that the poems present and the common features and tenets that underpin the institutions described, even if several features are anachronistically juxtaposed.<sup>126</sup> Likewise Carey is wary of taking the homogenising mythical milieu of the poems at face value, but also makes the point that the panhellenic appeal of the texts can be a

---

<sup>119</sup> Carey, C. (2013, pp.6-7)

<sup>120</sup> Cf. *Od.*12.439-40

<sup>121</sup> Cf. *Il.*18.497-508

<sup>122</sup> Raaflaub, K. A. (1997, pp.629-30)

<sup>123</sup> Gagarin, M. (2008, pp.13-34)

<sup>124</sup> Raaflaub, K. A. (1997, pp.629-41)

<sup>125</sup> Osborne, R. (2006, pp.214-18)

<sup>126</sup> Osborne, R. (2006, pp.211-16)

useful feature as it means that the phenomena in evidence would at least have been recognisable to audiences.<sup>127</sup>

This thesis is therefore going to exercise a judicious caution with the available material, looking for the types of rules and potential solutions to disputes presented in the poems and which the poet and his audience were aware of and could recognise, but avoiding seeing anything like a coherent system of rules. Moreover, while this thesis makes use of anthropological definitions when considering what sorts of speech and behaviour we might consider to be ‘legal’ in character, it will not go as far as some scholars have in using anthropological studies to reconstruct what the social world of the poems looked like. Instead, comparisons will be used to consider how neighbouring cultures addressed similar issues in order to understand how the similarities in their rules, practices and language might have arisen.

What this chapter aims to elicit from the texts are features that indicate an understanding of legal behaviours as early as the 8<sup>th</sup> century – before our earliest evidence of legal writing – and the types of ‘trouble-cases’ that might precipitate legal activities or occasion the articulation of prescriptive, consequential norms. While, as we shall see in Chapter 2, the language of the poems is able to express and formulate collections of rules similar to those found in written laws, they do not provide anything like a detailed account of ‘oral law’, offering only glimpses of rules and dispute resolutions suggestive of legal behaviour. However, used with caution, the norms and institutions that we find in the poetry of Homer and Hesiod do suggest that legal behaviour was a feature of early Archaic *poleis* through their sense of normative order and the importance attached to living in communities with rules and formalised procedures for regulating behaviour, ensuring that disputes did not get out of hand and that senior figures followed accepted practices.

Both the *poleis* described by Homer and the cities that have been excavated dating from the 8<sup>th</sup> century BCE onwards tend to be built around an *agora*. This space was a place to meet, conduct business and make significant decisions, but was also a normative space where disputes could be judged under the eyes of the community, governed by an accepted social hierarchy and using rules of conduct that allowed the resolution of arguments and the negotiation of settlements. Both Homer and Hesiod present us with communities where kinship groups and networks of reciprocal alliances were also essential and could have considerable influence over the normative landscape of the community, having the ability to shape an

---

<sup>127</sup> Carey, C. (2013, pp.6-7)

individual's behaviour, and being honour-bound to provide support to their members in times of need.<sup>128</sup> Moreover, these structures were supplemented by religious beliefs which could anchor the rules of society in the perceived will of the gods, with visual symbols, sacred rites and solemn oaths that could all be used to add ceremonial and psychological gravitas to proceedings, pronouncements and agreements.

The 8<sup>th</sup> and 7<sup>th</sup> centuries were also a time of great change as the *poleis* were beginning to take shape and their social structures were evolving to meet new challenges. This chapter will therefore also consider the ways that the legal cultures of the archaic *poleis* were adapting to these changes, considering both the developments that preceded the emergence of communities that bear the hallmarks of Greek city-states in the archaeological record, and the changes that can be observed in their social architecture after the appearance of the earliest written laws. In particular, it will consider the similarities and differences in their responses to the areas of dispute that concerned Homer and Hesiod and examine the role that 'oral law' and customary solutions might have played in the development of legal writing, as well as the ways that internal social strife and contact with Near Eastern legal traditions might have encouraged the creation of written legislation.

### **I. Before the *polis***

In order to understand the evolution of the social world that Homer, his audiences and his ancestors would have recognised, we must first attempt to identify some of the structures and developments of the pre-alphabetic *polis* and the societies that came before it. Our earliest and most direct written sources for any pre-alphabetic Greek society come from the Mycenaean palaces, with their use of Linear B texts to keep records and accounts.<sup>129</sup> This culture seems, on the face of it, to stand in marked contrast to the communal *poleis* of Archaic and Classical Greece, which developed in the wake of its collapse. Mycenaean kings (*wanakes*), ruling significant territories from palaces which centrally controlled and bureaucratically administered the means for making war and secondary economic production, are a far cry from the precarious reciprocal and kinship relations that are implied by the needs of Homeric leaders to motivate their followers or *poleis* built around the sorts of public meeting-places that characterised the Greek settlement patterns that began to appear across the *poleis* of the Archaic

---

<sup>128</sup> Humphreys, S. C. (1978, pp.195-204)

<sup>129</sup> Ober, J. (2015, pp.72-73), Morris, I. (2006, p.77)

period.<sup>130</sup> However, the structural differences between the ‘palace’ culture of the Bronze Age and the *poleis* that emerged later mask a more complicated reality, with centralised Mycenaean bureaucracies operating to take fairly modest taxes and rents from peasant communities which were otherwise predominantly self-sufficient and self-governing and as a result were able to survive and thrive independently after the Mycenaean collapse.<sup>131</sup>

We have no evidence to suggest that these communities or their arbitrators had recourse to anything resembling written law and as such they were probably reliant on traditional customs and norms to provide the rules that they were required to operate by and enforce. A tantalising glimpse of the sort of issue that might have been of interest to the palace is recorded in Linear B tablets discussing land tenure where individuals are listed as owners or tenants of different sorts of plots. While there are no specific written laws to speak of, there does appear to have been a vocabulary for different types of land occupation, procedures for resolving disputes and a system of devolved control to individual communities.

e-ri-ta, i-je-re-ja, e-ke, e-u-ke-to-qe, e-to-ni-jo, e-ke-e, te-o, da-mo-de-mi, pa-si ko-to-na-o, ke-ke-me-na-o, o-na-to, e-ke-e, to-so pe-mo GRA 3 T 9

*Eritha, the priestess, holds and lays claim to an e-to-ni-jo on behalf of the god, but the damos says that she holds an o-na-to of ke-ke-me-na land to the value of this much seed: GRA 3 T 9 PY Ep704 lines 5-6*

While land may have been rented from local overlords (*ko-to-no ki-ti-me-na*) a *ke-ke-me-na ko-to-na* commonly appears to denote plots rented from the community (*da-mo*).<sup>132</sup> This suggests that while a centralised power-structure existed to keep order, with officials to ensure that rents were collected for themselves and the palace, communities had access to some common land. They must therefore have had their own systems for administering and allocating such land, its labour force and its fruits. The *damos* in the inscription seems to be considered a legal actor in its own right, presumably via a representative individual or body, and likewise, *e-ri-ta* seems to have been acting on behalf of a similarly independent temple

---

<sup>130</sup> Morris, I. (2006, pp.72-84), Raaflaub, K. A. (2000, pp.29-30), Ober, J. (2015, pp.123-54), Finley, M. I. (1978, pp.84-97), Momigliano, A. (1978, p.183)

<sup>131</sup> Morris, I. (2006, pp.72-74, 80), Shelmerdine, C. W. & Bennet, J. (2008, pp.291, 306-8)

<sup>132</sup> Hooker, J. T. (1980, p.139)

cult.<sup>133</sup> These separate nuclei of religious, economic and social power with their capacity to interact with one another under the palace hierarchy suggest that temples and villages were at least semi-autonomous and able to represent their communities in disputes that came before the *wanax*, as implied by the two contrasting claims referred to in this text.

Following the collapse of the Mycenaean palaces at the start of the Iron Age, the vast majority of Greeks probably lived in chiefdoms or acephalous communities structured along kinship and age-set lines, with networks of families cooperating to look after their own interests.<sup>134</sup> This paved the way for the more decentralised and communal societies of the Iron Age and the early Archaic period, characterised by representative bodies and institutions rather than the central authority of the palace and its *wanax*,<sup>135</sup> though still operating through a deep-rooted culture which included the use and transmission of oral rules and the adaptation or reinterpretation of them to suit their immediate and evolving needs.

## II. The evolving *Polis* and its institutional framework

By the 8<sup>th</sup> century we can see the foundations being laid for the developments of the Archaic period, with increasing urbanisation and distinctive patterns of settlement, albeit with significant variations in size, territory and economic activity. *Poleis* that have been excavated from the 8<sup>th</sup> to 7<sup>th</sup> centuries are often constructed around open spaces bordered by monumental temples indicating not only the importance placed on commercial activity but also an emphasis on the public performance of religion, politics and dispute resolution.<sup>136</sup> This can be seen in the expectations of the poetry of Homer and Hesiod which idealise communities organised around *agorai* which are centres for regular commercial activities, religious festivals and political debate, but are also an important public forum for settling quarrels in accordance with understood rules and principles that are embodied in the *agora* and its rituals. *Agorai* also functioned within wider societal expectations of behaviour and social structures which left their mark on both our early poetic sources and the rules and institutions of later Greek *poleis*. Status based on a combination of ancestry, age-set and merit seems to have determined the level of

---

<sup>133</sup> Lupack, S. (2011, p.212-13)

<sup>134</sup> Morgan, C. (2009, p.44)

<sup>135</sup> Raaflaub, K. A. (1997, p.625), Morris, I. (2006, pp.72-84), Ober, J. (2015, pp.123-54)

<sup>136</sup> Ober, J. (2015, p.29), Crielaard, J. P. (2009, pp. 351-66), Morgan, C. (2009, pp.49-54), Gagarin, M. (2005, pp. 91-93; 2004, p. 177), Thomas, R. (2005, p. 43; 1996, pp. 27-29), Murray, O. (2000, pp.236-38), Perlman, P. J. (2000, pp.59-60), Osborne, R. (1999, pp. 346-47), Hölkeskamp, K-J. (1992, pp. 72-73)

access one had to decision-making forums, the respect individuals were accorded and the influence that could be exerted over proceedings and the community as a whole. Kinship and reciprocal ties bound individuals to one another in networks of trust and expectations of assistance both in the *agora* and in acts of self-help. Religion underscored many of the rules, tenets and practices of these societies through the belief that they were approved by the gods, and reinforced the authority of norms and procedures through the ritual behaviours and language incorporated into them.

The characters of these social structures changed as *poleis* evolved between the 8<sup>th</sup> and 6<sup>th</sup> centuries. Noble families continued to exert a powerful influence over the proceedings of Greek *poleis* but the burgeoning city-state began to set them against each other as they vied to be selected for official positions which often had limited terms and were bounded by strict rules on their remits and penalties for overreaching them.<sup>137</sup> Kinship groups were still an integral part of the prosecution of cases but the vocabulary of larger tribal units came to be manipulated in order to serve different purposes as cities expanded and selection of magistrates and other officials became more complex. Religion would also continue to have an important role in the legal forums of the evolving *polis* with oaths and rituals continuing to be incorporated into their procedures, and the gods evoked by monumental buildings and inscriptions that enshrined the community's laws.

### 1. *Agora* as normative space

The open spaces that came to sit at the heart of Greek *poleis* were an important characteristic of this type of settlement, but this is not what *agorai* actually were in the 8<sup>th</sup> century. In Homer, the term *agorē* more often refers to the gathering itself or the act of debating or public speaking than to the spot at which it occurred.<sup>138</sup> Thus the incorporation of open meeting places into the civic architecture of Archaic *poleis*<sup>139</sup> suggests the physical reflection of an existing and naturally-occurring social system of self-governance that had grown up after the collapse of the bureaucratic monopolising power of Mycenaean rulers.<sup>140</sup> Gatherings of

---

<sup>137</sup> See pp.185-88 Morris, I. (2009, pp.70-77), Rhodes, P. J. (2000, pp.468-73), Hölkeskamp, K.-J. (1992, pp.65-71), Humphreys, S. C. (1978, pp.200-2)

<sup>138</sup> The council of the Achaean *laos* and leaders in their temporary settlement outside Troy and even the discussions between Odysseus and his crew are as much *agorai* as the ones on the *Shield of Achilles* or in Ithaca. Cf. *Il.*1.54, 305, 2.93-100, 144-49, 207-398, *Od.*9.171, 10.188, 12.319

<sup>139</sup> Ober, J. (2015, pp.21-29, 128), Crielaard, J. P. (2009, pp.361-68), Wilson, J.-P. (2009, p.553), Morris, I. (2009 pp.66-72; 2006, pp.82-84), Perlman, P. J. (2000, pp.72-76)

<sup>140</sup> Ober, J. (2015, pp.124-28), Morris, I. (2006, pp.76-77)

community members could range in function from religious festivals to councils of war or prosecutions of offences and had a range of general rules allowing individual voices to be heard - some more than others – and more specific ones for resolving particularly difficult issues, like trials for highly emotive cases.<sup>141</sup> Homer and his eighth century audience seem to have regarded frequent gatherings as fundamental to social life, with the epics expressing beliefs that the sites of *agorai* and their decision-making procedures must be revered and respected, that they should be regularly held and must include all those eligible to attend.<sup>142</sup> *Agorai* and *boulai* were therefore as much a phenomenon of normative culture that enabled each Greek community to reach decisions collectively as a space in which to do so.<sup>143</sup>

The normative dimension of the *agora* can be seen in the idealised scene of dispute resolution on the *Shield of Achilles* (*Iliad* 18.497-508), which paints an interesting picture of how a disagreement (*neikos*) could arise and be resolved.<sup>144</sup> The scene is a very noisy and crowded affair involving a significant portion of the community, but which was also governed by strict rules that could enable a final outcome to be agreed upon. The people (*laoi*) are gathered around a pair of disputants who are arguing over a blood-price (*poine*) in the *agora*. A public declaration is made before both parties make for an arbitrator (*istōr*), who appears to be drawn from the elders (*gerontes*) that deliberate the decision and was perhaps the one to whom the golden talents are given for speaking the straightest judgement (506-8). The elders

---

<sup>141</sup> Roebuck (2001, pp.55-85) describes a number of different dispute resolution processes that are found in early Greek legends and which would, presumably, have reflected some of the features available to archaic citizens. These do not represent a set of procedures that was known in any one community, but do reveal common features of early Greek dispute resolutions such as the sorts of individuals traditionally trusted to arbitrate, typical offences requiring arbitration, the kinds of rules for enabling resolutions to be conducted, and the basis on which arbitrations were sought. Sealey (1994, pp.93-111) identifies several voluntary procedures and the types of evidence admissible for proving cases, and attempts to find the origins of compulsory litigation in Hesiod and later sources. Cf. Gagarin, M. (1986, pp.20-50; 2008, pp.13-37)

<sup>142</sup> Finley, M. I. (1978, pp.75-81) Cf. The Cyclopes' lack of an *agora* and Aegyptius' dismay that the *agora* of Ithaca has not been held since Odysseus left (*Od.*2.25-27) and the importance attached to the 'sons of the Achaeans' by Achilles as they give the *themistes* *Il.*1.237-39

<sup>143</sup> Morgan, C. (2009, pp.60-61)

<sup>144</sup> While the idealised depiction in this scene and its amalgam of features mean that the precise details are not a reliable guide of any one procedure, the significance attached to it in the simile and the clear sense of order that emerges show the important place of such dispute resolution forums and the value of such institutions and their rules. For a fuller discussion of the challenges posed by this passage to those who have attempted to reconstruct the legal issues and mechanisms at the heart of this scene, see Westbrook, R. (2015, pp.1-2) cf. MacDowell, D. M. (1978, pp.19-20), Gagarin, M. (1981, pp.13-16; 1986, pp.31-33)



hold the *skēptrā* (505), perhaps signifying their right to speak or maintain order as they do in other *agorai* described in the poem,<sup>145</sup> the disputants both make their cases (506 *amoibēdis d'edikazon*) and heralds (*kērukēs*) restrain the crowd of supporters. This suggests an organic but ordered process where the function of the *agora* – as a place for negotiating business, gathering support or, in this case, offering a settlement – creates the potential for disagreements but also provides the mechanisms and rules by which they can be resolved. Extended groups attached to each side exert pressure (502) and it was probably a noisy affair, but there are also evidently understood rules governing the conduct of the dispute resolution with norms dictating who could speak at a given time and individuals specifically tasked with judging the case and keeping order.

The scene, coming as it does among idyllic pastoral and festival scenes and in contrast to a city at war, idealises a society with a framework of rules and customs for resolving disputes and demonstrates the ability of Greek communities to call on mechanisms and institutions to suit their particular needs. As Conley and O'Barr have identified, such a normative system not only maintains public order, but actually functions by interrupting the natural course of an argument. Introducing a series of norms governing the interaction allows people to feel they are having their say, and causes them to re-articulate and thus re-think their position, forcing the argument to undergo a 'transformation' into something which can have a resolution.<sup>146</sup> Resolutions of *neikea* in this way seem to have been familiar to Homer and his audience since the enigmatic description on the *Shield of Achilles* and the simile of the judge in *Odyssey* 12.439-40 suggest that these were not infrequent occurrences and, since the descriptions leave much to the imagination on the precise details of the rules they operated, it seems likely that elements of them would have resonated with those meant to hear them. This also appears to have been similar to the way that Hesiod understands the resolution of a *neikos* as he enjoins his brother to avoid getting caught up in disputes in the *agora*:

---

<sup>145</sup> Knudsen, R. A. (2014, p.45), MacDowell, (1978, p.14), Cf. The way it is held by those who wish to speak in assembly (*Il.2.279, 23.566-69*) and its use by Odysseus to beat Thersites (*Il.2.265-9*)

<sup>146</sup> Conley, J. & O'Barr W. (1998, pp.86-89) This phenomenon is described as dispute 'transformation' as it gives a new perspective on a dispute, enabling a resolution to be reached for the matter in hand. However, it also has the potential to confuse and frustrate litigants when they no longer recognise the case that is being prosecuted and can, of course, leave room for verdicts to be challenged or alternate legal proceedings to be brought as disputes rumble on. Cf. Donovan, J. (2008, pp.243-54), Humphreys, S. C. (1985, p.245), Llewellyn, K. & Hoebel, E. A. (1941, pp.45-47).

ὦ Πέρση, σὺ δὲ ταῦτα τεῶ ἐνικάτθεο θυμῶ,  
μηδέ σ' Ἔρις κακόχαρτος ἀπ' ἔργου θυμὸν ἐρύκοι  
νείκε' ὀπιπεύοντ' ἀγορῆς ἐπακουὸν ἐόντα.  
ᾠρη γάρ τ' ὀλίγη πέλεται νεικέων τ' ἀγορέων τε  
ᾧτινι μὴ βίος ἔνδον ἐπηετανὸς κατάκειται

*O Perses, set these things in your spirit,  
And let not Eris, who delights in evil turn your heart from work  
Watching and being a listener to disputes (neike') in the agora  
For there is little time for disputes (neikeōn) and agorai  
For one who does not have enough for life set aside at home<sup>147</sup>*

Hesiod suggests that *agorai* are the sites and occasions where *neikea* frequently played out in public and, while he advocates avoiding them for the less costly option of private settlement<sup>148</sup> and deplors the corruption of the *dōrophagoi basilees* (bribe-devouring leaders),<sup>149</sup> they nevertheless seem to have been a commonplace institution that must have been an essential means for resolving disputes.

The features that enabled Homeric and Hesiodic *agorai* to transform disputes and demonstrate their authority remained important in the Archaic and Classical periods even as more diversified and distinctive procedures began to emerge. The essential process of a public hearing remained broadly the same and many *poleis* continued to use their *agorai* as centres of normative power, mentioning them in legal texts as a place to bring cases or make contracts, or using them as a site for written legislation to be published.<sup>150</sup> The importance of such spaces also came to be reflected in the monumental architecture, ritual practices and legends that grew

---

<sup>147</sup> *Op.*27-31

<sup>148</sup> 35-36

<sup>149</sup> 38-41,

<sup>150</sup> Ober, J. (2015, p.29), Gagarin, M. (2008, pp.88-89), Roebuck, D. (2001, p.104), MacDowell, D. M. (1978, p.23) Cf. in Gortyn where the *agora* continues to be mentioned in inscriptions as the major normative centre where contracts and agreements could be made (*IC IV* 72.10.35-6, 11.10-14, cf. *IC IV* 80.14) and witness testimony given (*IC IV* 75A.8, 81.11) (Perlman, P. J. 2000, p.72). Likewise, Dreros seems to have had an architecturally defined *agora* from the 8<sup>th</sup> century, beside which is the temple, usually associated with Apollo, which would come to be adorned with the city's earliest laws. (Gagarin, M. 2008, pp.76-79; Thomas, R. 2005, p.43; Hölkeskamp, K-J. 1992, pp.73-75) For the evolution of the diverse plethora of Athenian courts and the continued normative importance of the *agora*, see Lanni, A. (2006, pp.15-17, 27)

up around a community's normative institutions, further conferring legitimacy<sup>151</sup> on their rules and demonstrating their relationship with the *polis*' identity.<sup>152</sup>

## 2. Kinship Groups

Among the rules governing public dispute resolutions were expectations of who should turn out to support a particular side depending on the status of each of the parties and their kinship or reciprocal ties to them.<sup>153</sup> Family and personal contacts must have been very important in Archaic Greek communities with both the epics of Homer and Hesiod's didactic emphasising the value of building, maintaining and managing alliances and reciprocal relationships in order for society to function properly. The expectation of families to support one in a dispute is most explicitly stated in *Odyssey* 16.97-98:

ἢ τι κασιγνήτοις ἐπιμέμφει, οἷσί περ ἀνὴρ  
μαρναμένοισι πέποιθε, καὶ εἰ μέγα νεῖκος ὄρηται.

*Do you find some fault with your brothers, in whom a man trusts  
To fight, even if a great dispute (neikos) breaks out?*<sup>154</sup>

This suggests that kinship groups might be expected to take one's side and the close bonds between leaders and their extended networks of retainers, dependants, formal and informal friends or allies in Homer imply that these too could be required to participate in *neikea* in a similar way.<sup>155</sup> It therefore seems likely that those who held the highest status within the strongest support networks stood the greatest chance of success in public meetings and disputes through the number of voices that could be marshalled in their favour and the greater force that

---

<sup>151</sup> Humphreys, S. C. (1985, pp.252-55)

<sup>152</sup> See pp.203-42

<sup>153</sup> Roebuck, D. (2001, pp.59-60)

<sup>154</sup> (= 16.115-16) A similar expectation can be seen in *Od.*18.138-40 where Odysseus' violent false persona relies on his father and brothers to help him get out of trouble when he has acted unjustly 'trusting in my strength and power' (*biē kai kartei eikōn*).

<sup>155</sup> The closeness of ties between leaders and their dependents is expressed in *Od.*8.581-6 and can especially be seen in the close relationships that Achilles has with Phoenix (*Il.*9.485-95), Patroclus (*Il.*23.89-90) or Odysseus has with Eumaeus (*Od.*15.362-70) and Eurycleia (*Od.*1.432-35). Cf. Also the use of extended kinship groups to prosecute vendettas in *Od.* 13.259-75, 15.272-78, 23.118-20 while these are acts of self-help rather than peaceful restitutions, it is likely that heads of households could also count on their support in forums like the dispute on the *Shield of Achilles*.

could be mustered as a deterrent.<sup>156</sup> During arbitrations, these groups could apply pressure both in support of an individual and on the individual himself,<sup>157</sup> creating a reliance on senior figures to represent the interests of their retainers, friends and kin but also giving supporters the power to influence the choices of their leaders by offering or withholding their assistance or using their privileged access to bend their ears. Likewise, if resolution could not be reached, violent action and the threat of exile might draw in larger support networks, like the relatives of the man killed by Theoclymenus hunting him down,<sup>158</sup> the suitors' relatives' pursuit of Odysseus<sup>159</sup> or the attempts by Phoenix' relatives to prevent him leaving.<sup>160</sup>

The expectation that kinship groups would help prosecute cases continued well into the Classical period with complex networks of kinship ties being drawn together in the speeches of Attic orators to support cases<sup>161</sup> and we also find evidence that Classical Greek legislators and reformers were manipulating existing allegiances and social sub-groupings to direct these self-regulating units and to enable institutions to function effectively.<sup>162</sup> The appropriation of tribal terms by Archaic and Classical lawgivers to regional units for inducting citizens, settling minor disputes and selecting political or judicial officials<sup>163</sup> suggests that such groupings were indeed a fundamental part of the social fabric of Archaic Greek society and probably fulfilled very similar functions, supporting their members during disputes whether by feuding or through the courts and policing internal disagreements.<sup>164</sup> The *hetaireiai* of Crete, the *sussitia* of Sparta, and the *phratries* and *phyla* of several *poleis* seem to have grown out of social groups that were in existence at least as early as the 8<sup>th</sup> century<sup>165</sup> and their continued association with

---

<sup>156</sup> Finley, M. I. (1978, pp.98-106), Roberts, S. (1979, pp.123-28, 150-51, 180-81), Todd, S. C. (1990, pp.27-28)

<sup>157</sup> Finley, M. I. (1978, pp.72-81), Roebuck, D. (2001, pp.68-69). Telemachus seems to be attempting to employ such pressure when he entreats the heads of the families of his mother's suitors at *Od.*2.74-79, alluding to their responsibility to regulate the behaviour of their affines and his helplessness in the face of the support they would be bound to commit in response to any violent action he might take.

<sup>158</sup> *Od.*15.272-78 cf. *Od.*13.259-75

<sup>159</sup> *Od.*24.413-71

<sup>160</sup> *Il.*9.464-77

<sup>161</sup> Humphreys, S. C. (1986, pp.57-91), Rhodes, P. J. (2000, pp.469-72)

<sup>162</sup> Kapparis, K. (2019, p.32), Lanni, A. (2006, p.17), Hansen, M. H. & Nielsen, T. H. (2004, pp.96-97), Humphreys, S. C. (1978, pp.131-32, 195-96) cf. *Arist.Pol.*1264a, 1300a, 1301b, 1319b, *Ath. Pol.*8, 12, 21, *Plu.* Sol.19

<sup>163</sup> Rhodes, P. J. (2000, p.469)

<sup>164</sup> Ulf, C. (2009, p.91)

<sup>165</sup> Ulf, C. (2009, p.90), Humphreys, S. C. (1978, pp.165-68, 194-208) cf. *Il.* 2.362-3, where the subdivisions *phyla* (tribes) and *phratries* (clans) in the organisation of armies suggest that

the *polis*' political and normative functions may have been down to their ability to have certain state activities devolved to them and to foster social cohesion within the community. It therefore seems that early lawmakers saw the benefits of directing the power of personal and local allegiances in the *polis*-communities that emerged during the Archaic period, with norms encouraging cooperation between local and familial units and adapting institutions to resolve the differences that inevitably emerged. As writing enabled more complex artificial systems to be developed and rationalised, *poleis* controlled and redefined the composition and make-up of these groups, while at the same time using the language of clans, tribes or geographical areas to forge its own allegiances between citizens and drive their active participation in different aspects of society.

### 3. The changing character of Hierarchies

Both *agorai* and kinship groupings in the Homeric epics seem to have operated strict hierarchies, supported by norms reinforcing the responsibilities of different status-groups and the rights individuals had to speak in assembly or discipline those who spoke out of turn. Kings in the sense of hereditary monarchic rulers were probably all but unknown in 8<sup>th</sup> century Greek communities, with their characteristically communal institutions and relatively widespread access to the technologies of writing and iron tools and weapons.<sup>166</sup> Instead, the politics and administration of 8<sup>th</sup> and 7<sup>th</sup> century *poleis* were probably dominated by the interactions of noble families and their kinship groups. Hesiod's use of *basilees* in the plural in the contemporary setting of *Works and Days* suggests that his understanding of a *basileus* is of a member of some kind of elite who between them were able to adjudicate disputes. The Homeric

---

society was still primarily organised along the lines of blood-relationships and powerful social attachments, which would lead one to fight for one's kinsmen in war, and support or advise them in civilian disputes. *Phylon* can apply to tribal military units, ethnic groups (*Od.*3.282, 7.206, 307), families (*Od.*14.68, 181), and even those of a given occupation (*Od.*8.481), suggesting that this, too was a means of categorising people according to family associations both for war and as a basis for economic activity or social status.

<sup>166</sup> Ober, J. (2015, pp.54-56, 64-68 & 126-37), West, M. L. (1997, pp.14-15), Raaflaub, K. A. (1997, pp.633-41) Finley, M. I. (1978, pp.111-2), Momigliano, A. (1978, p.183)

use of the Mycenaean titles *wanax*,<sup>167</sup> and *basileus*,<sup>168</sup> the ethnic *huies Achaion*<sup>169</sup> and the age-set marker *gerōn*<sup>170</sup> suggests that kinship groupings, inherited status and age sets could all be important determiners of rank,<sup>171</sup> but which operated alongside a traditional respect for the more dynamic, meritocratic heroic pursuits of wealth, justice and glory.

Combinations of these attributes appear to have contributed to the selection of those chosen to adjudicate a dispute. The *gerontes* on the *Shield of Achilles* seem to have been a group whose role in the trial and their right to occupy the sacred circle of seats was recognised by the community, so it seems natural that an *istōr* might have been selected from their number, perhaps on the basis of who was felt to deliver ‘the straightest judgement’.<sup>172</sup> The simile in *Odyssey* 12.439-40 describes a man (*anēr*) hearing a number of cases in a day, suggesting that he, too was sanctioned by the community to perform this task rather than at the specific request of litigants.

ἦμος δ' ἐπὶ δόρπον ἀνὴρ ἀγορῆθεν ἀνέστη  
κρίνων νείκεα πολλὰ δικάζομένων αἰζηῶν,

*at the time when a man rises from the agora for supper,  
after judging many disputes of fervent litigants.*

---

<sup>167</sup> The term *anax* from the Mycenaean *wanax* may originally have referred to a monarchic overlord and this may be reflected in the repeated use of the term to refer to Agamemnon, and its use to describe Nestor and Idomeneus may hark back to a time when the territories these three ruled were big palatial centres. However in Homer it is also a term often used simply to show respect especially to elder members of society, the gods and the deceased.

<sup>168</sup> Cf. *Il.*2.203-6, 6.163-66 The term *basileus* has its roots in the Mycenaean *qa-si-re-u* – an official ranked below the *wanax*. It continued to bear the general sense of ‘community leader’ but this seems to have evolved into a multiplicity of specific meanings in early Archaic poetry depending on the community, the audience, and the types and origins of norms expressed. This means that, in the Homeric *Kuhnstsprache* it can mean anything from ‘a member of the elite’ to ‘monarch’. Bachvarova (2016, pp.273-4) suggests that this semantic shift occurred in the post-palatial period as the local magnates of the Mycenaean period came to be the ruling elites of the many smaller settlements that were left when the palace bureaucracies collapsed.

<sup>169</sup> *Il.*1.237-39

<sup>170</sup> Cf. *The Shield of Achilles* whose judges seem to have a similar role to Hesiod’s *basileis* and *Od.*13.8 where Alcinous describes the status of the Phaeacian nobles as those who drink *gerousion aithopa oionon* ‘sparkling wine fit for elders’

<sup>171</sup> Roebuck, D. (2001, pp.54-55), Osborne, R. (1996, pp.187-88), Posner, R. A. (1979, pp.33-34)

<sup>172</sup> MacDowell, D. M. (1978, pp.20-21), Gagarin, M. (1986, pp.27-33)

There also appear to have been ancillary officials (*kērukes*), who are tasked with maintaining order in the court<sup>173</sup> and are described as *dēmioergoi* ‘those who work for the people’<sup>174</sup> and *skēptouchoi* ‘sceptre-bearing’ implying a role in enforcing the rules that governed such occasions.<sup>175</sup> Homeric *kērukes* are drawn from a leader’s *therapontes* or *hetairoi*, suggesting that their appointment and influence rested on their attachment to particularly powerful social or kinship groups<sup>176</sup> and thus that they were under the employ and protection of the most senior individuals of a community rather than agents of the *polis* itself or its institutions.

Despite this strict hierarchy, the narratives of both the *Iliad* and the *Odyssey* caution leaders against ignoring their peoples’ wishes or losing their trust<sup>177</sup> suggesting that this was also an important part of the normative basis by which they ruled. The term *politai* is most often used in the Homeric epics to denote ‘inhabitants’ or ‘townsfolk’ rather than those with particular rights or freedoms.<sup>178</sup> However, Homer does acknowledge the role of ‘the people’ (*laos*) in approving the decisions of their leaders but also in their attempts to influence them.<sup>179</sup> The pressure the *laos* exerts in the *Shield of Achilles*, is ostensibly in their support of the two sides but also may have helped to ensure that justice was seen to be done, and may perhaps

---

<sup>173</sup> *Il.* 18.503 & 505

<sup>174</sup> *Od.* 19.135

<sup>175</sup> Ulf, C. (2009, p.87) The term *dēmioergoi* is also used to describe those with a viable trade (seers, healers and craftsmen) in *Odyssey* 17.383. *Kērukes* continue to have been necessary for enforcing behaviour in the courts and in disseminating laws and proclamations in Classical Athens, offering themselves for hire both to private individuals and to civic bodies that elected them. Brown, A. S. (2011, pp.25-90).

<sup>176</sup> For example, Eurybates and Talthybius are both the *kērukes* and *therapontes* of Agamemnon (*Il.* 1.321). They appear to have been listened to by their superiors (cf. Achilles’ *therapōn* Phoenix in particular attempts to use his close ties to persuade him (*Il.* 9.437-95) and Patroclus is enjoined by Nestor to do the same (*Il.* 9.785-93) hoping his words will be effective ‘for the exhortation of a friend is a fine thing’ despite his lower status) even in public matters (cf. Talthybius and Idaios breaking up the duel between Ajax and Hector, Idaios persuading them to desist with his wise counsel as the night falls (*Il.* 7.276-82))

<sup>177</sup> Raaflaub, K. A. (2000, pp.28-34), Ulf, C. (2009, pp.83-86)

<sup>178</sup> *Od.* 7.131, 17.206, *Il.* 2.806, 15.558, 22.429

<sup>179</sup> Luce, J. V. (1978, p.8), Roebuck, D. (2001, p.59). The Achaeans applaud Agamemnon’s declaration of Menelaus’ victory and demands to the Trojans at *Iliad* 3.461, but the formula ἐπὶ δ’ ἦνεον ἄλλοι is also used to describe the reaction of Odysseus’ comrades to Eurylochus’ mutinous arguments for eating Hyperion’s cattle (*Od.* 12.294, 352), forcing Odysseus to acknowledge that he cannot force them to do anything and resorting to using an oath to turn them from this ruinous course. Most obviously, the people find themselves opposed to their leader when the Achaeans express their enthusiastic assent to Chryses’ demand for his daughter to be returned only for Agamemnon to refuse (*Il.* 1.22-25, 376-79).

have had a role in the awarding of the two talents for speaking ‘the straightest judgement’.<sup>180</sup> Likewise, when Menelaus is proposing an oath-challenge to settle the dispute between himself and Antilochus, he reinforces his suggestion by voicing the expectation that none of the Achaeans will disagree with the justice of his method.<sup>181</sup> This suggests that, while the expertise of individuals like the *gerontes* was deferred to, the *laos* was an important barometer of what was felt to be ‘just’ which, as Roebuck has argued, implies that the rules governing proper conduct in these scenes was embedded in the normative culture of the community as a whole.<sup>182</sup>

Such roles seem to have been rather more formalised and restricted in the later Archaic period with senior officials limited in their jurisdictions and the duration of their tenures, and minor officials more directly employed by the *polis*. The application of terms like *gerontes* or *basileis* to more clearly defined offices or decision-making bodies in later communities<sup>183</sup> and subsequent rules about rights to participate in *polis* affairs and selection processes for officials are indicative of the various ways in which more specialised political systems with more sophisticated mechanisms for selection were emerging, perhaps amid mounting concerns about abuses of power, or to channel the competing interests of influential families.<sup>184</sup> By the time of our first legal inscriptions in the 7<sup>th</sup> century, we have evidence of specialised religious officials from Tiryns<sup>185</sup> and a text from Dreros in Crete<sup>186</sup> provides evidence of the *kosmos*, a judicial official, having the type of limited tenure that became a hallmark of official positions across the Greek world. Likewise, an early 5<sup>th</sup> century inscription from Chios,<sup>187</sup> while fragmentary in its preservation prescribes fines for officials tasked with protecting the *rhētras* of the *dēmos*, who seem to have had limited term offices<sup>188</sup> and operated in conjunction with a civic body

---

<sup>180</sup> Papakonstantinou, Z. (2008, pp.34-35), Roebuck, D. (2001, pp.59-62)

<sup>181</sup> *Il.*23.579-80

<sup>182</sup> Roebuck, D. (2001, p.60)

<sup>183</sup> Cf. the Spartan *gerousia*, (Plu. *Lyc.*26 Arist. *Pol.*1270b, Plat. *Resp.* 347b-d, 519b ff.) and the increasingly ceremonial *basileus* of the Athenian Archons (Gagarin, M. 2000, pp.570-71)

<sup>184</sup> Humphreys, S. C. (1988, p.470), Gagarin, M. (1986, pp.85-86, 90 & 135-36), Papakonstantinou, Z. (2008, pp.127-31)

<sup>185</sup> *SEG* 30.380 Though specialised priests do appear in Homer - the terms *arētēr* and *hiereus* appear to signify those whose job it was to lead prayers and rituals for specific deities (e.g. Chryses in *Il.*1.11, 370 and Dares, priest of Hephaestus in *Il.*5.10) – they do not appear to preside over the extensive hierarchies that we find in the Tiryns text.

<sup>186</sup> Appendix 3 §1

<sup>187</sup> *ML* 8, Jeffery, L. H. (1956, pp.157-62)

<sup>188</sup> The use of participles *dēmarchon e basileuon* implies that they were only ‘acting as *dēmarch* or *basileus*’ suggesting that these positions were not permanent (Roebuck, D. 2001, pp.270-271)



(*boulē dēmosiē*).<sup>189</sup> Significantly, our earliest written laws imply that such systems for determining the positions and roles of leaders already existed by the 7<sup>th</sup> century and that the texts were simply enshrining structures for limiting their powers.<sup>190</sup>

The combination of specialisation and definition of elite responsibilities and the growing sense of civic identity from the 8<sup>th</sup> century onwards seems to have contributed to an evolving understanding of the *polis* itself as a legal entity and enabled more complex systems of justice to develop with different courts overseen by different officials and bodies with their own mechanisms for ensuring accountability. It also changed the relationship between elites, the *polis* and its judicial institutions, with the *polis* defining roles in the city's administration leaving community leaders to jockey for status by seeking election to various positions<sup>191</sup> and, while individuals might periodically resort to using the systems or the beliefs of the populace to seize absolute power, they rarely experienced enduring success.<sup>192</sup>

The increasing normative power of the *polis* can also be seen in the emphasis on public sanction in the laws they produced themselves, which often begin with enactment clauses which use terms like *polis*, *dēmos* or ethnic designations to indicate the basis on which they were passed.<sup>193</sup> The ability to monumentalise such communal decisions gave entire communities a single voice, and meant that law came to be physically situated in the fabric of the *polis* itself as a visual signifier of the *polis*' role in shaping the law. Moreover, the act of putting up normative inscriptions in the *polis*' name necessitated the employment of those with specific skillsets and, just as cities were no longer beholden to elite leaders to provide marshals from their entourage to enforce order in their judicial spaces,<sup>194</sup> they could also recruit artisans (*dēmiourgoi*) to demonstrate their power in creating and publishing laws. In particular, two 6<sup>th</sup> century inscriptions<sup>195</sup> tell of scribes who were employed in perpetuity by the *polis* to make the formal inscriptions required to publish laws and treaties and given salaries, freedom from taxation and citizenship. This suggests that the *polis* was now in a position to offer an income,

---

<sup>189</sup> Jeffery, L. H. (1956, pp.161-67), Meiggs, R. & Lewis, D. pp.14-17, Roebuck, D. (2001, pp.270-71)

<sup>190</sup> Cf. *Ath. Pol.*3.1-4 which similarly suggests that the practice of defined terms of office for the *polis*' most senior officials had been set at 10 years and then reduced to 1 year by the time the *thesmothetai* were instituted to record the *thesmia* and safeguard the consistency of law in Athenian courts and before Drakon's laws are supposed to have been created in the late 7<sup>th</sup> century.

<sup>191</sup> Morris, I. (2009, pp.70-72)

<sup>192</sup> Ober, J. (2015, pp. 153-54)

<sup>193</sup> See pp.143-49

<sup>194</sup> Kapparis, K. (2019, pp.23-30), Brown, A. S. (2011, pp.25-90)

<sup>195</sup> Appendix 3 §8 and *Nomima* I.23 See pp.216-17

rights and privileges<sup>196</sup> and was using this power to employ individuals to produce new legislation that would become part of the city's normative and physical landscape.

#### 4. Religion

Greek normative culture was very closely connected with religious beliefs, with the gods often described as sanctioning, demanding and punishing certain behaviours in normative discourse. It is very common to find statements directly associating justice ('*dikē*' or '*themis*') with the gods in general and Zeus in particular, suggesting that the norms of the community and its procedures were tightly bound up with the will of Zeus and the physical laws of nature.<sup>197</sup> For example, Hesiod's advice to his brother about how to conduct a sacrifice emphasises its importance in the success of business dealings and comes among a series of rules setting out the correct treatment of strangers, orphans, neighbours and family members who were all protected by Zeus, suggesting that correct worship of the gods was closely associated with one's behaviour in the community.<sup>198</sup> The tight bond between religious belief and normative culture was also important for sanctioning the institutions for dispensing justice which in turn enabled them to function. It is physically represented in Homer by the religious overtones given to symbols of authority like the *skēptron*, which symbolises the justice of Zeus,<sup>199</sup> or the 'sacred circle' of stones for the *gerontes* to sit on in the *agora*. This religious symbolism could be an especially powerful tool, using the psychology of formalised practices and belief systems to reinforce arguments, norms and pronouncements.

The importance of oaths in particular to the proper functioning of communities and their normative spaces can be seen in the beliefs of Archaic poets who lament when they are not kept and fear that this lack of respect for the gods will lead to the ruin of human society.<sup>200</sup> In Homeric speeches oaths have formalised religious language and are often used, whether rhetorically or solemnly, as a source of proof that could help resolve a dispute,<sup>201</sup> sway an audience or seal a bargain<sup>202</sup> and could be reinforced by the use of sacred objects, sacrifices

---

<sup>196</sup> Ober, J. (2015, pp.135-37)

<sup>197</sup> See pp.101-8 and Appendices 1 and 2

<sup>198</sup> *Op.*327-65

<sup>199</sup> Cf. *Il.*1.234-39, 2.204-6, 9.37-39, 9.98-99, 9.156 = 298, 18.505

<sup>200</sup> Bachvarova, M. R. (2007, pp.184-88), Roebuck, D. (2001, pp.75-77)

<sup>201</sup> Thür, G. (1996, pp. 64-66) cf. *Il.*23.573-85, Fletcher, J. A. (2008, pp.20-23), Callaway, C. (1993, pp.15-24) *HH* 4.274-5, 383-9, *Il.*15.35-46

<sup>202</sup> Humphreys, S. C. (1988, pp.466-67), Thür, G. (1996, p.71), Todd, S. C. (1990, pp.21-22), Papakonstantinou, Z. (2008, p.91), Gagarin, M. (2007, pp.44-45), Carawan, E. M. (2007, pp.73-75)

and rituals.<sup>203</sup> Moreover, Hesiod and early lyric poets seem to envisage a court system that relies very heavily on oaths to ensure their honesty and integrity as they bemoan the fates of *poleis* that break them. The continued usage of oaths in the face of these problems can be understood through the reaction of writers to it; Hesiod is not critical of the system, but castigates false-swearers reminding them of the damage they are doing to their communities:

οὐδέ τις εὐόρκου χάρις ἔσσεται οὐδέ δικαίου  
οὐδ' ἀγαθοῦ, μᾶλλον δὲ κακῶν ῥεκτῆρα καὶ ὕβριν  
ἀνέρα τιμήσουσι.<sup>204</sup>

*There will be nothing like gratitude for him who swears well nor him who is just,  
Nor for the good man; rather they shall honour only that man who commits evil and  
shame,*

And the wrath the gods might bring on them:

αὐτίκα γὰρ τρέχει Ὀρκος ἅμα σκολιῆσι δίκησιν:  
τῆς δὲ Δίκης ῥόθος ἐλκομένης ἢ κ' ἄνδρες ἄγωσι  
δωροφάγοι, σκολιῆς δὲ δίκης κρίνωσι θέμιστας:  
ἦ δ' ἔπεται κλαίουσα πόλιν καὶ ἦθεα λαῶν,  
ἡέρα ἐσσαμένη, κακὸν ἀνθρώποισι φέρουσα,  
οἳ τέ μιν ἐξελάσωσι καὶ οὐκ ἰθεῖαν ἔνειμαν.<sup>205</sup>

*For Oath straightaway runs alongside crooked verdicts:  
When Justice is seized, there is tumult as greedy men fight  
And they pass judgement with crooked justice  
Weeping, she hounds the city where the people dwell,  
Shrouded in mist, bringing evil to men,  
Those who have driven her out and do not give her proper respect.*

---

<sup>203</sup> Sealey, R. (1994, pp.97-98), cf. *Il.*1.233-45, 3.292-301

<sup>204</sup> *Op.*190-192

<sup>205</sup> *Op.*219-24

Hesiod's arguments have several parallels in poetic sources throughout the Archaic period<sup>206</sup> and this sense that it was not the oaths but the people swearing them that was at fault suggests both a realism of outlook and an enduring belief in the normative power of the divine.

The connection between the legal and the religious remained important in the written laws and institutions of the Archaic and Classical periods. Legal inscriptions continued to rely on and sanction the use of oaths, often stating when they were necessary or could constitute sufficient evidence for a decision to be made, demonstrating the ways that they could be integrated into the more fixed procedures of legal inscriptions in order to ensure that justice was seen to be done.<sup>207</sup> Even curses could be written down in a normative form to underline the importance of their prohibitions to the gods and the community, showing that inscribed normative language was able to give the *polis* the power to call on the gods to direct behaviour as well as their own mechanisms of enforcement.<sup>208</sup>

Legal inscriptions frequently opened with references to their divine sanctioning,<sup>209</sup> becoming monuments to the sense of justice that was a part of their authority and, as we shall see in Chapter 4, could be used to regulate aspects of religious behaviour like proper conduct at festivals or the activities of religious hierarchies. Just as political, social and religious gatherings encouraged the articulation and administration of divine justice, so monuments and temples could become normative mouthpieces for both the gods and the *polis* as a social entity by their incorporation of text into the tangible, visual and spatial realm of a city and its inhabitants. Legal inscriptions often seem to have taken advantage of the monumental presence and divine associations of the spaces and structures they were put on, such as temple walls in Crete<sup>210</sup> or the Acropolis, *Stoa Basileōs* and *Metrōon* in Athens,<sup>211</sup> showing the value that sacred buildings had in projecting both religious and normative power among the citizens.<sup>212</sup>

---

<sup>206</sup> Papakonstantinou, Z. (2008, p.117) cites similar sentiments spanning the 6<sup>th</sup> and 5<sup>th</sup> centuries in the works of Theognis (fr. 200, 399, 745, 1139) a fragment of Hipponax (115W) and in Herodotus (6.86)

<sup>207</sup> See pp.206-9

<sup>208</sup> Parker, R. (2005a, pp.68-77) Cf. Appendix 3 §3 ll.9-23, §9 See pp.224-27

<sup>209</sup> See pp.143-49

<sup>210</sup> Gagarin, M. & Perlman, P. J. (2016, p.16), Perlman, P. J. (2000, p.60), Papakonstantinou, Z. (2008, p.54)

<sup>211</sup> Sickinger, J. P. (2004, pp.95-96), Richardson, M. B. (2000, pp.601, 607-8), Thomas, R. (2005, pp.58-59), Osborne, R. (1999, pp.346-7), Shear, T. L. (1995, pp.171-89), Miller, S. G. (1995, pp.135-43)

<sup>212</sup> Studies of literacy levels have found that they may have been sufficiently high that if not everyone could read, they could usually find someone who could read the laws of the *polis*.

### III. The Occasions of Dispute

Within this institutional framework we see a variety of mechanisms for resolving disputes (*neikea*), norms that encourage peaceful resolution and a premium placed on the ability by rulers, heads of households and litigants to negotiate settlements (*poinai*) successfully. Such systems and rules existed both to ascertain guilt and to transform intractable disputes into a form where a resolution could be reached.<sup>213</sup> While some cases could have been resolved quickly if the proposed outcome conformed with existing norms that were amenable to both parties or a higher authority could compel them to accept a resolution, there existed the option of some form of negotiation which could take place in private discussion within kinship groups, mediations involving unofficial third parties, oath-challenges or the public forum of the *agora*. It was also possible for individuals to take matters into their own hands, with the families of victims taking revenge or the perpetrators of crimes fleeing into exile.

The semantics of dispute and resolution in Homer and Hesiod seem to reflect this range of responses. *Neikea* range from those that are pursued by violent self-help either to avenge a wrong<sup>214</sup> or drive an offender into exile,<sup>215</sup> to those which involve a more formalised resolution in the *agora*.<sup>216</sup> Likewise the range of meanings for the resolutions of

---

Papakonstantinou, Z. (2002, pp.137-40), Gagarin, M. (2008, pp.176-77), Wilson, J-P. (2009, pp.556-57), Lanni, A. (2016, p.84). In particular Kristensen (2008, pp.1-9) has also remarked on the relatively high levels of functional literacy in *poleis* like Gortyn, with legal inscriptions alluding to rules that were sufficiently well known that even a rudimentary knowledge of how to read the inscription could give people access to the law's provisions. Moreover, as we shall see (pp.216-19) some *poleis* appear to have appointed officials to advise on points of law, interpreting and, where necessary, reading it for them.

<sup>213</sup> Humphreys, S. C. (1985, p.245). For a more detailed analysis of dispute 'transformation', its function and consequences in modern contexts, see Conley, J. & O'Barr, W. (1998, pp.86-95)

<sup>214</sup> Cf. *Il*.11.671ff. (Nestor's description of tit for tat raids on cattle), *Od*.21.303 (the battle of the Lapiths and Centaurs), *Od*.24.543 (the families of Penelope's suitors seeking to avenge their sons' deaths)

<sup>215</sup> Cf. *Il*.9.448 (Phoenix driven into exile by his father)

<sup>216</sup> Cf. *Il*.18.497-508, *Od*.12.439-40, *Op*.29-35, *HH* 4.269

disputes - *poinē* (penalty/recompense),<sup>217</sup> the verb *tinein* (to owe or pay a penalty)<sup>218</sup> and its abstract noun form *tisis* (reckoning)<sup>219</sup> - imply that this selection of responses was to be expected if one committed a transgression and that the concept of *timē* (honour) was commonly associated with evaluating the correct response to an offence.<sup>220</sup> The use of the same vocabulary to speak of divine retribution<sup>221</sup> suggests that these rules were analogous to the rules of the gods and that the consequences were equally bound up with notions of *dikē*, *themis* and *kosmos* that reflected both divine and human ‘justice’.<sup>222</sup> Moreover, the associations of this language with discharging debts<sup>223</sup> suggests that these penalties were part of the reciprocity that held society together and seems to have been a component of dispute transformation through procedures that conformed to societal expectations and with penalties that could be subject to the same types of regulated self-help that came with reclaiming what was owed.

---

<sup>217</sup> *Poinē* as self help: *Od.*23.312, this can also refer to vengeance for those killed in battle *Il.*14.482-85, 16.394-98, 21.27-28; as compensation: *Il.*3.290, 9.632-36, 18.497-508, again, this can apply to recompense for someone killed in battle cf. *Il.*13.659

<sup>218</sup> *Tinein* as ‘suffer vengeance’: *Il.*2.354-56, 2.590, 3.28, 3.351, 3.366, 11.142, 15.116, 15.236, 17.34, 19.208, 21.134, *Od.*3.197, 3.203, 3.206, 9.317, 9.479, 15.177, 20.121, 23.31, 23.57, 24.235, 24.352, 24.470, *Th.*165, 472; as pay compensation *Il.*3.276-91, *Od.*8.348, 8.356, also used in this sense is the compound *apotinein* *Il.*1.128, 9.632-36, 2.132.

<sup>219</sup> *Tisis* as ‘vengeance’ *Il.*22.18-20, *Od.*1.40, 13.141-45, *Th.*210; as recompense *Od.*2.76-79

<sup>220</sup> Cf. *Il.*3.286 where the compensation due to the Achaeans in the event of the duel between Menelaus and Paris being won by Menelaus is described as a *timē*, but at line 290 it is described as a *poinē*. Finley, (1978, pp.115-26), Gagarin, (1986, pp.100-6), Sealey, (1994, pp.144-54) and Roebuck (2001, pp.65-67) have cited evidence from the disputes during the funeral games for Patroclus (*Il.*23.581-85 cf. 438-41, 473-98) where those who are wronged demand satisfaction for slights against their *timē* (honour) suggesting that Homeric society views honour and offences against it partly in tangible, material terms and the use of exchanges of wealth as a means of restoring honour could also have had the benefits of restoring peace during more serious disputes.

<sup>221</sup> The association of these penalties with divine retribution can be seen in the notion of *dikē*, *themis* and *kosmos* discussed in the next chapter, suggesting that human penalties and divine wrath were part of a continuum that contributed to the Greeks sense of ‘justice’. However, we also see the concepts of *poinē* (*Il.*17.209-8, *Op.*748-49, 755-56) and *tisis* (*tinein* - *Il.*1.42, *Od.*12.378, 12.382, 13.213; *apotinein* - *Il.*4.161, 9.512, 22.271, *Op.*260; *tisis* – *HH* 2.368) used in relation to curses or divine wrath.

<sup>222</sup> See pp.101-8

<sup>223</sup> The verb *tinein* is also associated with the notion of paying a debt suggesting that the penalty is felt to be ‘owed’ and thus that the victim has a right to collect. Cf. *Il.*18.407 where Hephaestus makes armour for Achilles in order to pay (*tinein*) his ‘life-debt’ (*zōagria*) to Thetis (cf. the use of the term *moichagria* as the debt owed (*ophellei*) by Ares for committing adultery (*Od.*8.332) and which Poseidon agrees to stand surety (*tisein* 347-48)). It’s also linked to the gambling debt incurred by the wager between Idomeneus and Oilean Ajax *Il.*23.487

The boundaries and occasions which attract litigious behaviour that one finds in human groups typically involve the safety of one's person or those in one's charge, access to resources like land, food and material goods, and access to sex.<sup>224</sup> The norms invoked in these areas of conflict reveal not only whether a given behaviour is acceptable or not, but also the selection of responses available to Archaic communities in the event of a breach. This section will analyse how all these three areas of life are represented in disputes described by the Homeric epics and hymns, and the different responses that each garnered from the community. It will also examine how these features of the oral legal cultures that we find in our 8<sup>th</sup> and 7<sup>th</sup> century sources were reflected in the earliest written laws and will consider the challenges and solutions posed by two further issues that especially exercised the Greeks of this period: the division and passing on of inheritance and the conduct of litigants, witnesses and judges during the trial process itself.

### 1. Bodily harm and homicide

Human societies vary considerably in their level of tolerance for violent behaviour and the circumstances under which it might be permissible, though most have some norms that regulate violent action, either to deter attackers from unprovoked assault or to prevent cycles of violence developing.<sup>225</sup> Gagarin has identified a considerable number of instances of homicide referred to in Archaic Greek epic and three main outcomes from acts of violence: settlement by compensation, violent retribution or the killer fleeing to exile.<sup>226</sup> The way violent offences are handled gives a sense of the range of different options for dispute resolution throughout the poems as many of the guiding constraints and avenues available to those pursuing disputes resulting from an act of violence can also be found in a number of other common areas for dispute.

#### *Compensation*

We have already seen the dispute (*neikos*) on the shield of Achilles, which surrounds a *poine* for a murder that has been committed (*Il.*18.498-9). The fact of the murder does not appear to be in question, rather, the dispute surrounds the *poine* itself and whether the victim's relatives should accept the price that has been offered.<sup>227</sup> This tells us both that the

---

<sup>224</sup> Roberts, S. (1979, pp.31-32), Donovan, J. (2008, pp.3-14)

<sup>225</sup> Roberts, S. (1979, pp.154-58)

<sup>226</sup> Gagarin, M. (1981, pp.6-13)

<sup>227</sup> Roebuck, D. (2001, pp.59-60)

dispute has been ‘transformed’ from one about the facts of the case into one about negotiating or accepting compensation and that the option to settle with a financial *poine* is being seriously considered. The sense that the *poine* is in some way material rather than corporal suggests a preference for this type of recompense over an act of physical vengeance, a belief that is expressed in Ajax’ maxim at *Il.9.632-6*:

καὶ μὲν τίς τε κασιγνήτοιο φόνοιο  
 ποινήν ἢ οὗ παιδὸς ἐδέξατο τεθνηῶτος:  
 καὶ ῥ' ὁ μὲν ἐν δήμῳ μένει αὐτοῦ πόλλ' ἀποτίσας,  
 τοῦ δέ τ' ἐρητύεται κραδίη καὶ θυμὸς ἀγήνωρ  
 ποινήν δεξαμένῳ·

*And yet from his brother's slayer, one receives  
 the blood price, or that of a slain child,  
 and he who has done it remains among the people having paid dearly for it  
 and the aggrieved man's heart and age are softened  
 when he has taken the price,<sup>228</sup>*

Financial compensation obviously has the advantage that it both penalises the offender and offers real, tangible benefits to the relatives of the victim, but we also see in this example that the offer of a *poine* can facilitate the healing of rifts, even allowing an offender to remain in the community despite killing another and without a cycle of feuding behaviour developing.

The scene on the *Shield of Achilles* with its dispute over the *poine* rather than the murder *per se* suggests that this type of recompense represents an important means to transform the argument from apportioning blame for an individual’s death into one about the appropriate value of compensation and interrupts a dispute before it develops into a cycle of violence, even allowing both sides to move forward and continue to coexist relatively peacefully after a killing.<sup>229</sup> The system for determining the value of a person who has been

---

<sup>228</sup> There is a similar hope that the kinsmen of Penelope’s suitors will forget their anger at Odysseus for killing their sons at *Od.24.483-6* when, having sworn solemn oaths, they will reconcile and go back to the way things were.

<sup>229</sup> We can also see the use of compensation in the Homeric Epics to make amends for other crimes where an individual’s person or kinship group is violated. Zeus gave Aeneas’ ancestor Tros some immortal horses as a *poine* for his abduction of Ganymede (*Il.5.263-67* cf. *20.232-*



harmful or killed is likely to have been the product of negotiations which may have been framed in terms of what was appropriate for the offence, but also incorporated a range of factors like their standing in the community, their wealth and the capacity their relatives had for exacting revenge if the compensation was inadequate.<sup>230</sup> The community may well have had an understood customary amount that was acceptable in such cases,<sup>231</sup> but the scope for negotiating the value attached to movable property would probably have meant that this would be subject to discussions and part of the trial process may well have included determining how to modify this to suit the specific case.<sup>232</sup> Moreover, the close affinity between the concept of a *poinē* and the notion of *timē* (honour) in our sources suggests that this was a useful vocabulary for articulating such negotiations and thus transforming disputes into ones that could be resolved.

### *Self-help*

Accepting an offer of compensation may have made practical sense under some circumstances, but of course, the murder of a loved one is a highly emotive occasion and it is entirely possible that an offer of compensation might be refused and that the victims would seek violent revenge. The word *poinē* can refer to an act of vengeance as well as the compensation given by a murderer to a victim's family and is seen in the Homeric epics as an acceptable course of action for the family of a victim of violent crime.<sup>233</sup> Retribution and exile appear to be more commonly attested in Homer than consensus-based agreement<sup>234</sup> and,

---

35, *HH* 5.202-11) and Agamemnon describes the compensation that would be due to him if Menelaus defeats Paris in single combat as a *timē* (*Il.*3.286) and a *poinē* (290).

<sup>230</sup> Gagarin, M. (2008, p.17)

<sup>231</sup> Roebuck, D. (2001, pp.60-1), Thomas, R. (2005, p.57), Finley, M. (1978, pp.63-65), the way cf. *Il.*3.286-87 which suggests that the compensation paid by the Trojans to the Achaeans could set a sort of 'precedent' by acting as an example to future generations. We also get a hint of the ways that the community could have valued people and objects in their allocation of prizes for wrestling in Patroclus' funeral games *Il.*23.702-5 Sealey, R. (1994, pp.142-44). While this is not a perfect analogy for the allocation of appropriate *poinai*, the vocal presence of the community in the *agora* on the *Shield of Achilles* suggests that community norms likely had a part to play in determining appropriate *poinai* to compensate grieving relatives and this could have been a mechanism for determining value where litigants could not agree. *See pp.* 70-71

<sup>232</sup> Roebuck, D. (2001, pp.63-4)

<sup>233</sup> Cf. *Od.*23.312 where the revenge Odysseus has on the Cyclops is described as a *poinē*. The word is also used twice in *Op.*749-55 to describe divine punishment, underlining the connection between the concepts of 'justice' and 'retribution' with both human procedures and the will of the gods. *See also pp.* 103-4

<sup>234</sup> Gagarin, M. (1981, p.10)

while this may not have been the norm for the poet and his audience, there may well have been a degree of acceptance of the use of violence to redress wrongs. In particular the story of Orestes which is repeatedly alluded to in the *Odyssey* condones the idea of violent reprisal, as Nestor pronounces his opinion on Orestes' revenge for his father's death (*Odyssey* 3.196-7):

ὡς ἀγαθὸν καὶ παῖδα καταφθιμένοιο λιπέσθαι  
ἀνδρός, ἐπεὶ καὶ κείνος ἐτίσατο πατροφονῆα,  
Αἴγισθον δολόμητιν, ὅς οἱ πατέρα κλυτὸν ἔκτα.

*how good it is that even a child of a man who's died remains,  
since even he made his father's killer pay:  
devious Aegisthus, who'd slain his famous father.*

Nestor's sentiment suggests that violent action in response to a murder was accepted as a possibility which, while it conflicts with Ajax' sentiment above, may have been impossible for communities to prevent and could even have been condoned or justified in some cases.

However, self-help could create its own problems and the expectations on kinship groups to intervene when violence was done to one of their own could easily be visited back on those who exacted such revenge. Odysseus' slaughter of the suitors in his house causes outrage and sets him on a collision course with his people. The unified, forceful response of the suitors' families and the political upheaval it threatens can only be resolved by the appearance of Athene and the swearing of a *horkia* (treaty) between both sides.<sup>235</sup> This highlights the risk of cycles of violence developing as kinship groups could retaliate if they could muster sufficient force and that even leaders might find themselves at risk of reprisals if their actions endangered the stability of their communities.

### *Exile*

Facing the possibility of violent reprisal, it is also common for Homeric homicides to flee their community and head into exile; a possibility even Odysseus raises after he has killed all the suitors in his hall (*Odyssey* 23.118-20):

καὶ γὰρ τίς θ' ἕνα φῶτα κατακτείνας ἐνὶ δήμῳ,

---

<sup>235</sup> *Od.*24.546

ὃ μὴ πολλοὶ ἔωσιν ἀοσητῆρες ὀπίσσω,  
φεύγει πηούς τε προλιπὼν καὶ πατρίδα γαῖαν·

*For anyone, having slain just one man among his people,  
even if he does not have many avengers left  
flees, and abandons his kinsmen and fatherland.*

The generalised formation of this maxim suggests that this was seen as a valid option, and his qualification that people did so even if violent reprisals were unlikely suggests that such a choice might be driven by social factors like shame, condemnation or potential risks of *miasma* as much as by the threat posed by grieving relatives. Exile following a murder and the establishment of livelihoods outside the community is frequently depicted in the Homeric epics with its cast of characters who either join other communities or wander the world as semi-nomadic vagrants.<sup>236</sup>

The difficulties exiles faced are particularly exemplified by the story of Theoclymenus whose murder of a man in his own community leads him to wander the Mediterranean, pursued by the relatives of the dead man.<sup>237</sup>

τὸν δ' αὖτε προσέειπε Θεοκλύμενος θεοειδής·  
οὔτω τοι καὶ ἐγὼν ἐκ πατρίδος, ἄνδρα κατακτὰς  
ἔμφυλον: πολλοὶ δὲ κασίγνητοὶ τε ἔται τε  
Ἄργος ἀν' ἰππόβοτον, μέγα δὲ κρατέουσιν Ἀχαιῶν.  
τῶν ὑπαλεύαμενος θάνατον καὶ κῆρα μέλαιναν  
φεύγω, ἐπεὶ νύ μοι αἴσα κατ' ἀνθρώπους ἀλάλησθαι.  
ἀλλά με νηὸς ἔφεσσαι, ἐπεὶ σε φυγὼν ἰκέτευσα,  
μὴ με κατακτείνωσι: διωκόμεναι γὰρ οἴω.

*And unto him godlike Theoclymenus said:  
Thus am I away from my fatherland having killed a man  
From my clan: and he had many many brothers and kinsmen*

---

<sup>236</sup> Gagarin, M. (1981, pp.9-10) cf. *Il.*2.661-70 (Tlepolemos), 13.694-97 (Medon cf. 15.333.36), 15.431-39 (Lykophron), 16.572-75 (Epigeus), 23.85-90 (Patroclus), 24.480-83, *Od.*13.259-75 (Odysseus' *alter ego*), 14.380-81 (an Aetolian who was a guest of Eumaeus)

<sup>237</sup> *Od.*15.272-78 cf. Odysseus' story in *Od.*13.259-75

*In horse-rearing Argos, and they ruled mightily among the Achaeans  
 Evading these I flee death and black fate,  
 Since now it is my lot to be a vagrant among men  
 But set me on your ship, since I have supplicated you as I flee  
 So they may not kill me, for I believe they are in pursuit.*

It is the number and power of the victim's kinship group that give him particular cause to fear for his life since they are evidently able to muster the resources not only to do him harm but also to give him reason to think that they could follow him beyond the bounds of Argos. He finally finds refuge with Telemachus in exchange for his services as a prophet and it appears to be relatively common for exiles in the Homeric epics to be assumed into another kinship group as a *therapōn*.<sup>238</sup> The protection offered by leading families comes in exchange for services rendered, and it appears that the murder *per se* does not preclude someone from being admitted into a new community or even becoming loyal and worthy members of their new group. Achilles' companion Patroclus came to Peleus' house because of a murder he committed as a boy:<sup>239</sup>

ὥς ἐτράφημεν ἐν ὑμετέροισι δόμοισιν,  
 εὐτέ με τυτθὸν ἔοντα Μενόϊτιος ἐξ Ὀπόεντος  
 ἤγαγεν ὑμέτερόνδ' ἀνδροκτασίης ὑπο λυγρῆς,  
 ἥματι τῷ ὅτε παῖδα κατέκτανον Ἀμφιδάμαντος  
 νήπιος οὐκ ἐθέλων ἀμφ' ἀστραγάλοισι χολωθεῖς·  
 ἔνθά με δεξάμενος ἐν δώμασιν ἱππότα Πηλεὺς  
 ἔτρεφέ τ' ἐνδυκέως καὶ σὸν θεράποντ' ὀνόμηεν·

*as we grew up in your house,  
 when Menoitios brought me, as a child, from Opous,  
 into your house, on account of a grievous homicide,  
 the day I killed Amphidamas' son.  
 Just a child, I did not mean to, but was angered over a game of dice.  
 There Peleus the horseman welcoming me into his house,*

<sup>238</sup> Finley, M. I. (1978, pp.55-56, 104-5) cf. *Il.*15.431-39, (Lykophron), 16.572-75 (Epigeus), 23.85-90 (Patroclus)

<sup>239</sup> *Il.*23.84-90

*brought me up carefully, and named me your attendant.*

Unlike the situation with Theoclymenus, this exile, perhaps influenced by the lack of intent (*ouk ethelōn* – ‘unwilling’) behind the killing<sup>240</sup> and Patroclus’ youth (*nēpios* ‘childish’), is arranged by Patroclus’ father Menoitius who brings him to Peleus’ house to be brought up. This suggests that exile could be arranged by a killer’s kinship group as a means to keep peace in the aftermath of an unwilling or juvenile homicide while still allowing him the opportunity to live as a full member of a different *oikos*.

Homicide and violence naturally came to be topics that were legislated for by later lawmakers, who also seem to have been aware of several of the concepts and methods of resolution that can be found in epic poetry, and to have incorporated them into their legislation. As we shall see, our surviving version of Drakon’s 7<sup>th</sup> century Athenian homicide law<sup>241</sup> regulates killing ‘*ek pronoias*’ (without premeditation) suggesting that this was a consideration for him, just as Patroclus’ murder may have been mitigated by being *ouk ethelōn*. Likewise, as Gagarin has argued, the text leaves space for all three possible outcomes in a Homeric murder, prescribing exile as the default penalty, tightly regulating self-help and implying, through the successions of relatives who can give a pardon, that peaceful restitution could be an option which seems likely to have involved some form of monetary payment.<sup>242</sup> Moreover, other efforts to regulate self-help<sup>243</sup> and fix the means of calculating *poinal*<sup>244</sup> demonstrate not only that these were the basic means of restitution available throughout the Greek world, but that written law began to be used to regulate them in different and distinctive ways with varying levels of detail and prescriptiveness.

## 2. Property

There is a clear notion of property in our sources which demonstrate an awareness of systems of cataloguing and valuing it, as well as an understanding of the means for resolving thefts. An indication of the way that thieves were dealt with when they were caught can be

---

<sup>240</sup> Likewise when distinguishing unwilling and willing illicit sexual activity *See pp.75-76*

<sup>241</sup> Appendix 3 §2

<sup>242</sup> Gagarin, M. (1981, p.19) *See pp.195-96*

<sup>243</sup> Gagarin, M. (2004, p.178) Cf. Appendix 3 §5, *See pp.195-199*

<sup>244</sup> Cf. Appendix 3 §7 *See pp.222-25*

found in the Homeric Hymn to Hermes,<sup>245</sup> where the god of thieves and vagabonds is found out for having stolen the cattle of Apollo. The language of the hymn emphasises the trickery of Hermes' theft, comparing him to *phēlētai* (robbers) as he chooses to work at dusk and describing the offence as a *dolon aipun* (sheer deceit) (66-67). This, coupled with Hermes' protestations of innocence and efforts to obfuscate the evidence by threatening the only witness and offering to swear empty oaths, mean that the trial process has to start by ascertaining guilt and locating the stolen property before a resolution can be found.

Having failed to find his cattle in Maia's house, Apollo's threat to do something '*ou kata kosmon*' (255) suggests the possibility of more forcible extraction of his property or of a violent retribution that might be excessive given the nature of the crime. This implies both that violence was an option, but the phrase *ou kata kosmon* suggests that there was also a notion that such a response should be limited. As a result, like the scene on the *Shield of Achilles*, an external arbitrator is sought to prevent their argument becoming intractable or violent, however the resultant hearing is necessary to identify the offender as well as providing a platform for negotiating the resolution. Zeus therefore has to ascertain the facts of the case, taking the role of an inquisitorial judge, asking Apollo first to explain the cause of the dispute (329-32), before Hermes makes his reply (366-86) and finally pronouncing his verdict (389-96).

The resolution of the Homeric Hymn is ultimately amicable, as Hermes is able to give Apollo the priceless gift of his tortoiseshell lyre (504-9 Cf. 24-64) in exchange for the cattle he slaughtered and in the process wins great honour for himself and for Apollo. However, we might expect that in more contentious situations, the relative value of the item taken and the *poinë* might have to be assessed, negotiated and agreed.<sup>246</sup> The assigning of relative value of

---

<sup>245</sup> While there exists a high degree of uncertainty over the date of the Homeric hymns and this particular hymn is generally accepted to have been by far the most recent of the major hymns (probably from the late 6<sup>th</sup> century but potentially from as late as the early 4<sup>th</sup> century (Kirk, G. S. 1989, pp.70-74; Bungard, C. 2012, p.444n.)), it does share much of the language, style and compositional technique of the Homeric epics and likely stems from similar traditions of hexameter poetry and oral storytelling (Clay, J. S. (1997, pp.489-507)). In particular, Clay has argued that the similarities in tone, context and subject-matter of Demodocus' story of Ares and Aphrodite (*Od.*8.266-366 – see pp.77-79) to the narratives of the Homeric Hymns corroborates the notion that this tradition of narrative hexameter hymns may well have stretched back at least as far as the 8<sup>th</sup> century (Clay, J. S. (1997, pp.497-98). Moreover, this hymn in particular shows no awareness of the use of writing in the legalistic processes it describes and also demonstrates a number of normative principles, rhetorical techniques and sources of evidence that are consistent with the types of rules and dispute resolutions found in the Homeric epics and didactic poems of Hesiod.

<sup>246</sup> Gagarin, M. (1986, p.101), Roebuck, D. (2001, p.60)

gifts, prizes or compensation is rarely described in the main narratives of the *Iliad* and the *Odyssey* where Homer spends rather more time on cataloguing or explaining the histories of prestige objects, but occasionally we do see evidence of mechanisms by which an item's worth may be quantified. In the case of precious metals, the *talanta* - a measure of weight - is used,<sup>247</sup> but we also see worked objects, people and livestock are ascribed values given as numbers of cattle.<sup>248</sup> Similarly, when Achilles offers to compensate Agamemnon 'three or fourfold' for the loss of Chryseis in *Iliad* 1.128, we get a sense that he has a similar ability to equate her value to other objects and to use multipliers both to ameliorate Agamemnon's sense of dishonour and to downplay the value of his loss.<sup>249</sup> Therefore, the process by which values are arrived at, with the tendency to compare two items in quantifiable terms through multipliers or a number of oxen,<sup>250</sup> was available to assess and negotiate fair exchange or restitution and may often have relied on the kind of community consensus implied by the phrase ἐνὶ σφίσι τῶν Ἀχαιοί (the Achaeans valued [them] among themselves) in *Iliad* 23.703-5 to validate them.

While Achilles' statement suggests that compensation might be offered to someone suffering a material loss and Apollo's threat implies that violence was *ou kata kosmon* in his case, there do appear to have been occasions where forcible restitution was deemed appropriate. This appears to have been especially the case when *neikea* broke out between communities where there was no forum or arbitrators that could be appealed to in order that the dispute could be resolved amicably. Nestor describes a *neikos* between the communities of Pylos and Elis where tit for tat rustling of cattle seems to have descended into open warfare between the two communities,<sup>251</sup> or the missions engaged on by Iphitos and Odysseus to reclaim their cattle.<sup>252</sup> However, it also appears to have been possible for an

---

<sup>247</sup> The talent appears to be both a unit of weight for gold (cf. *Il.* 9.122, 264, 18.507, 19.247, 23.269, 614, 24.232 *Od.* 4.129, 526, 8.393, 9.202, 24.274) but it is also the term used for the scales of Zeus (cf. *Il.* 8.69, 12.433, 16.658, 19.223, 22.209, *HH* 4.324).

<sup>248</sup> Cf. The armour of Diomedes and Glaukus in *Il.* 6.232-36 which are valued at *enneaboion* (nine oxen-worth) and *hekatomboion* (a hundred oxen-worth) respectively, or the prizes in *Il.* 23.703-5, where a cauldron and a woman are valued at *duōdekaboion* (twelve oxen-worth) and *tessaraboion* (four oxen-worth)

<sup>249</sup> We also find the rhetorical use of multipliers in Homer when Achilles demeans Agamemnon's compensation by claiming that he would reject even 'ten or twentyfold' (9.379 cf. 22.349), suggesting, given the priceless nature of the offer, that he means that it would be impossible to compensate him.

<sup>250</sup> Finley, M. I. (1978, pp. 48-56), Ulf, C. (2009, pp. 86-87), Roebuck, D. (2001, pp.60-64 & 86).

<sup>251</sup> *Il.* 11.671-761

<sup>252</sup> *Od.* 21.11-38

individual to extract restitution through self-help against members of his own community. Odysseus, as he starts to set his house in order, anticipates that he will be able to reclaim the losses to his wealth by force:

μηλα δ' ἄ μοι μνηστήρες ὑπερφίαλοι κατέκειραν,  
πολλὰ μὲν αὐτὸς ἐγὼ ληίσσομαι, ἄλλα δ' Ἀχαιοὶ  
δώσουσ', εἰς ὃ κε πάντα ἐνιπλήσωσιν ἐπαύλους.

*But as for the sheep that the arrogant suitors creamed off,  
I in my turn will plunder (lēissomai) many myself, and the rest, the Achaeans  
Will give me, until such time as they fill all my out-buildings.<sup>253</sup>*

Alternatively, Telemachus suggests that, if the Ithacan leaders themselves had been consuming his wealth, he might, under normal circumstances, have been able to use social pressure to force them to repay what they had taken:

εἴ χ' ὑμεῖς γε φάγοιτε, τάχ' ἂν ποτε καὶ τίσις εἴη·  
τόφρα γὰρ ἂν κατὰ ἄστν ποτιπτυσοίμεθα μύθῳ  
χρήματ' ἀπαιτίζοντες, ἕως κ' ἀπὸ πάντα δοθείη·

*If it were you who were devouring them, there would soon be recompense (tisis),  
for we would accost you throughout the city with words,  
demanding our wealth until everything was given back.<sup>254</sup>*

This suggests that individuals might use their status and capacity to intimidate or shame individuals in public forums to secure payment and that it is only because of the dysfunction that is afflicting Ithaca in the poem that Telemachus resorts to calling the men out in the *agora*.

We can therefore see that a similar combination of violent self-help, social pressure and negotiation was available when prosecuting individuals who stole or cheated people out

---

<sup>253</sup> *Od.*23.356-8

<sup>254</sup> *Od.*2.76-78 cf. *Od.*13.15 where Alcinous uses the middle voice of the verb *tinein* to describe collecting a tithe from the people (*dēmos*) to make up for the gifts his nobles should provide to Odysseus.



of their property as those who committed violent offences. The adversarial forum of the *agora*, the need to negotiate the value of the original goods and the appropriate compensation meant that debate around this was often a fundamental part of the restitution process, transforming the dispute from one about whether an offence has been committed to one about how to resolve it to the satisfaction of the victim and the community. Violent reprisal could be used by those who could mobilise enough power to punish offenders or forcibly extract compensation, even if the individuals were beyond their community's reach. Social pressure could probably have taken a variety of forms, with pressure groups mobilised through personal and familial connections, appeals to the assembled community in the *agora* or the pronouncements of respected individuals acting as arbitrators.

The systems for calculating the relative values of goods and *poinai* and the reliance on social pressure, ties of affinity and self-help also appear to have been assimilated into the first written laws, even as they began to incorporate the technology of minted coinage into their provisions. As we shall see, before the introduction of monetary values, the ability to assign the relative worth of goods remained integral to the way that *poinai* were worked out and we also find multipliers that enabled written laws to fix fines that were proportional with the losses inflicted.<sup>255</sup> Moreover, despite serious concerns about honesty in business dealings, debt and exchange, the legislation on contracts and the conduct of transactions remained very much between individuals as legislation on such binding agreements was relatively simple, while the awarding of credit continued to depend on combinations of personal affinity, securities, oaths and self-help to ensure that debts were repaid.<sup>256</sup>

### 3. Sex

The kinship groups described in our 8<sup>th</sup> and 7<sup>th</sup> century sources contain a mixture of individuals and the formation of bonds both within an *oikos* or *polis* and between communities could often be cemented by marriage agreements, while other sexual relationships involving members of families, their slaves and affines could easily be sources of both cohesion and of friction. We therefore find a number of concerns of a familial, political or religious nature when determining whom one could or should marry or have sex with, governed by a combination of enforced general rules, contractual agreements and moral inhibitions. The breaking of such rules often precipitates similar responses to issues of

---

<sup>255</sup> See pp.223-26

<sup>256</sup> See pp.200-1

property and bodily harm, especially when they threaten the integrity of the *oikos*. Moreover, the complex relations between kinship groups meant that wider kinship groups could often be brought into play in support of parties in arbitration or to exert social pressure.

### *Disputes within the oikos*

For the most part, regulation of sexual relations by members of an *oikos* seems to have been at the discretion of its head, who appears to have been within his rights to use self-help against members of his own household in order to uphold his own and his family's honour. Telemachus' treatment of the slave-girls who slept with the suitors is especially brutal and his remark at *Od.*22.462-64 that they 'heaped reproaches on our head and on our mother and slept with the suitors' suggests that this was in part a result of the damage their conduct was having on the reputation of the *oikos*.<sup>257</sup> Males within an *oikos* could also find themselves punished or ostracised if their sexual activity was seen as a violation of the rights of more senior members. This happens to Phoenix who is driven into exile when he has relations with his father's concubine, presumably because, as his father's favourite, she was off limits.<sup>258</sup>

Likewise, the destabilising effects of intersecting sexual rights within an *oikos* seems to have been an issue that had to be negotiated in order to sustain a functioning household. The fact that Homer deems it worthy of comment that Odysseus' father Laertes valued Eurycleia highly but did not sleep with her suggests that sex between masters and concubines was an accepted part of the way slave-women were incorporated into a man's household and the role that sexual access played in kinship groups with its power both to foster cohesion and to fracture:

τὴν ποτε Λαέρτης πρίατο κτεάτεσσιν ἐοῖσι  
πρωθήβην ἔτ' ἐοῦσαν, ἔεικοσάβοια δ' ἔδωκεν,  
ἴσα δέ μιν κεδνῇ ἀλόχῳ τίεν ἐν μεγάροισιν,  
εὐνῇ δ' οὐ ποτ' ἔμικτο, χόλον δ' ἀλέεινε γυναικός·

---

<sup>257</sup> A similar sentiment can be seen in the remark that the slave-girl Melanthe 'had no pity in her heart for Penelope but engaged in a tryst and loved Eurymachus' *Od.*18.324-25

<sup>258</sup> *Il.*9.447-77 - Adultery within one's kinship group also seems to have been particularly deplored by Hesiod, who specifically cautions against committing the sin (*παρακαίρια*) of sleeping with the wife of one's brother, (*Op.*328-29) presumably fearing shame and the threat this poses to the stability of the family.

*Once, Laertes had bought her with his own possessions,  
when she was still in her early youth. He gave twenty oxen,  
and valued her as equal to his loyal wife in his halls,  
but he never mixed with her bed and avoided the wrath of his wife.<sup>259</sup>*

Who had sexual access to such women, how much sexual freedom they had and how much power they had to resist or consent also appears to have been governed by rules supported by the threat of how more senior members of an *oikos* might respond to a violation and the instability it might cause. Agamemnon's acknowledgement of Briseis as Achilles' property and his specific choice to mention that he has neither hurt her nor slept with her implies that even while he has had her in his possession, he has not broken the sexual boundaries that would be expected had she remained in Achilles' hands.

ἴστω νῦν Ζεὺς πρῶτα θεῶν ὕπατος καὶ ἄριστος  
Γῆ τε καὶ Ἥλιος καὶ Ἐρινύες, αἳ θ' ὑπὸ γαῖαν  
ἀνθρώπους τίνυνται, ὅτις κ' ἐπίορκον ὁμόσση,  
μὴ μὲν ἐγὼ κούρη Βρισηίδι χεῖρ' ἐπένεικα,  
οὔτ' εὐνῆς πρόφασιν κεχρημένος οὔτε τευ ἄλλου.  
ἀλλ' ἔμεν' ἀπροτίμαστος ἐνὶ κλισίῃσιν ἐμῆσιν.

*First let Zeus be my judge, highest and greatest of the gods,  
and Earth, and the Sun, and the Furies, who beneath the earth  
avenge men, when any man has sworn to a falsehood,  
that I have not laid hand on the girl Briseis  
neither to sleep with her, nor for any other reason.  
but she has remained, undistinguished, in my hut.<sup>260</sup>*

The term Agamemnon uses for 'lay hand on' (*cheiras epeneika*) is used on two other occasions in Homeric epic, both of which are in promises – using the future form *cheiras*

---

<sup>259</sup> *Od.*1.430-33. The destabilising impact of relations between a favoured concubine and a jealous wife can most clearly be seen in the story of Phoenix whose mother puts him up to sleeping with his father's mistress in order to get revenge on him (*Il.*9.449-57)

<sup>260</sup> *Il.*19.258-63

*epoisō* – that an individual will not be harmed.<sup>261</sup> This reading of the phrase is supported by the fact that his promise that he hasn't violated her applies to both sexually motivated and other forms of violence suggesting that sexual activity, violence or both would have infringed on Achilles' honour.

The way in which a sexual transgression was committed seems to have had little impact on the way that it was resolved, however we do find a key distinction that appears in the way that different matters are talked about that could have a bearing on whose honour was affected and which interest groups were drawn in. The issue of whether sexual activity is engaged in willingly could determine whether an offence was simply an issue of punishing a single offence against an *oikos* or one that might involve two guilty parties. This is implied when, in the story of Bellerophon, Anteia, the wife of king Proitos wrongfully accuses him of wishing to sleep with her *ouk ethelousē* (unwilling).<sup>262</sup> The allegation of rape or attempted rape may well make her less culpable<sup>263</sup> or at the very least would force Proitos to consider how his wife's family might respond to him hurting her or turfing her out. This stands in contrast to the behaviour of Aegisthus who does away with the singer who stands between him and Clytaemnestra and knowingly seduces her into willingly sleeping with him (*ethelōn ethelousan*), rendering them both culpable.<sup>264</sup>

#### *Wider kinship structures*

Heads of households seem not only to have had to consider their own domestic stability but also the relations of their *oikoi* within wider kinship structures. The disapproval Telemachus fears from his grandfather Icarus should he bow to the suitors' demand that he send his mother Penelope back,<sup>265</sup> suggests that, while he has the right to act according to their wishes, the termination of marriages could have serious ramifications for heads of households:

κακὸν δέ με πόλλ' ἀποτίνειν

---

<sup>261</sup> *Il.*1.89, where Achilles promises Calchas he will not be harmed if he tells the assembly his prophecy and *Od.*16.438, when Eurymachus promises Penelope that nobody will harm Telemachus.

<sup>262</sup> *Il.*6.165 Cf. *Od.*5.155 where the contrast between Odysseus and Calypso in his unwillingness to sleep with her is marked by the phrase *ouk ethelōn ethelousē*

<sup>263</sup> Cf. Patroclus' unwitting (*ouk ethelōn*) manslaughter

<sup>264</sup> *Od.*3.262-72

<sup>265</sup> *Od.*2.132-37

Ἰκαρίῳ, αἶ κ' αὐτὸς ἐκὼν ἀπὸ μητέρα πέμψω.  
ἐκ γὰρ τοῦ πατρὸς κακὰ πείσομαι, ἄλλα δὲ δαίμων  
δώσει, ἐπεὶ μήτηρ στυγεράς ἀρήσεται ἔρινυς  
οἴκου ἀπερχομένη· νέμεσις δέ μοι ἐξ ἀνθρώπων  
ἔσσεται·

*It would be a bad thing for me to pay back much  
to Icarus, if I willingly send my mother back.  
For I'll suffer evils from her father, but also a god  
will give me woe when my mother has prayed to the vile Furies  
having left this house. And there will be further retribution from mankind.*

Not only must Telemachus consider the loss of his wealth, but also the fact that this would represent a breakdown of relations between the two families. We also see his fear of religious and social pressure here, as it is apparent that he is anxious that sending her back would damage his reputation and that the threat of the furies suggests that this would in some way transgress the will of the gods.

The social complexities around marriage also created the potential for external forces to become involved in cases of sexual misconduct. While the head of an offended *oikos* could have taken direct, retributive action against members of his own household or those against whom he could muster sufficient force, if he was unable or unwilling to do so then the case could have led to a more formalised arbitration process. Homer's description of the cuckolded Hephaestus demanding public restitution for his wife's adultery in *Odyssey* 8.266-366 reveals not only the way that such a dispute might involve those beyond the individual's *oikos*, but also the procedures available to prove wrongdoing and reach settlement.

Hephaestus, having exercised self-help to trap Ares and Aphrodite in the act of making love invites all the (male) gods to witness the crime that has been committed (306-32). Zeus is called on to repay the bride-price which Hephaestus paid him, and the assembled gods can confirm what has happened, humiliate Ares and see that justice has been done. Poseidon takes pity on Ares, demanding that he be released (344-48) and offers to pay Ares' compensation to Hephaestus should he abscond (355-56). Hephaestus, in deference to Poseidon's higher status in the divine hierarchy, has to concede (358) and the conflict is resolved. Hephaestus' entrapment of his wife and her lover provides ample proof to the assembled witnesses that an offence has been committed. While the concept of turning one's

bed into an elaborate trap for an adulterer is far-fetched outside the realm of myth, there are several later ancient Greek legal sources which speak of seizing an offender in the act and fetching witnesses, either to perform an act of self-help<sup>266</sup> or to bring him to trial.<sup>267</sup>

What can be seen in this story, therefore, is a type of formalised, albeit non-violent, self-help which involves summoning the community to see that the offence has been done and thus ensure that Hephaestus is fully compensated for the dishonour he has suffered. Witnesses are required both to prove the adultery which is an offence against the cuckold's *timē*, and observe that the expected monetary compensation is promised, both by Zeus to whom Hephaestus has given gifts in exchange for his daughter's hand and by Ares, transforming the dispute from one of sexual transgression into a debt that is owed.<sup>268</sup> The penalty mentioned in this episode is given a very specific name (μοιχάγρια – adultery-money) and the use of such a precise term suggests that this type of compensation was readily intelligible to Homer and his audience, and thus that they had a vocabulary for compensations for this particular offence. The role that Poseidon takes in the story shows that there was a ready solution for addressing the concern that Hephaestus expresses at 350-53:

μή με, Ποσειδάων γαιήοχε, ταῦτα κέλευε·  
δειλαί τοι δειλῶν γε καὶ ἐγγύαι ἐγγυάασθαι.  
πῶς ἂν ἐγὼ σε δέοιμι μετ' ἀθανάτοισι θεοῖσιν,  
εἴ κεν Ἄρης οἴχοιτο χρέος καὶ δεσμὸν ἀλύξας;

*"Earth-holder Poseidon, don't bid me do this.  
The guarantees of wretches are wretched guarantees.  
How would I bind you among the gods immortal  
if Ares leaves and avoids his bond and obligation?"*

Homer therefore presents a procedure and penalties for dealing with cases of adultery without recourse to violence and supported by social and moral prohibitions against misconduct and encouraging those involved to achieve a swift resolution. The specific terminology and the

---

<sup>266</sup> cf. Lysias 1.23-27 Todd, S.C. (1993, pp.78-81), Cohen, D. (1990, p.147), the Gortyn Law Code requires that the witnesses swear an oath that they caught the adulterer in the act (*IC IV 72 col.2.36-45*), Parker, R. (2005a, p.72)

<sup>267</sup> Sealey, R. (1994, pp.123), cf. *IC IV 72 col.1.1-2.2* which forbids seizure before trial

<sup>268</sup> See pp.64-65n.

similarity of the event to the summoning of witnesses in cases of adultery described in later sources suggests that it would have been both more plausible than it at first seems and that the formalities observed by Hephaestus were part of a procedure that continued to influence accepted legal practices long after the *Odyssey* was composed. The types of distinctions found in Homeric and Hesiodic references to sexual transgressions and the means of resolving them are also reflected in the ways that different legal systems would later come to regulate them, as both Athenian law and the Gortyn law code demonstrate vocabularies that allow them to distinguish between seduction, rape and adultery,<sup>269</sup> and incorporate a similar reliance on procedural witnesses<sup>270</sup> to ensure that justice is served.

#### 4. Inheritance

In both Homer and Hesiod we find references to the difficulties of inheritance disputes, with issues arising over how estates were divided, provision for daughters and illegitimate sons, and the resolution of competing claims when there was no single obvious successor. Hesiod warns of the perils of leaving an estate intestate when, in the *Theogony* he talks about the necessity of marriage in securing one's property for the next generation:<sup>271</sup>

ὅς κε γάμον φεύγων καὶ μέρμερα ἔργα γυναικῶν  
μὴ γῆμαι ἐθέλη, ὄλοόν δ' ἐπὶ γῆρας ἵκηται  
χῆται γηροκόμοιο· ὁ δ' οὐ βιότου γ' ἐπιδευῆς  
ζῶει, ἀποφθιμένου δὲ διὰ ζωῆν δατέονται  
χηρωσταί.

*Whoever, evading marriage and the troublesome deeds of women,  
Does not wish for marriage and arrives at destructive old age,  
Wants for a carer in his advanced years, and although not lacking in life's necessities  
While he lives, when he has died his distant relatives share out his life's endeavours.*

---

<sup>269</sup> See pp.190-94

<sup>270</sup> See pp.195-199 Robb, K. (1992, pp.642-54)

<sup>271</sup> *Th.* 603-7

However, in *Works and Days*, he also cautions against having too many heirs,<sup>272</sup> perhaps alluding to the difficulties he and his brother faced in dividing an estate that is insufficient to satisfy both their ambitions:

μουνογενῆς δὲ πάϊς εἶη πατρώϊον οἶκον  
φερβέμεν· ὥς γὰρ πλοῦτος ἀέξεται ἐν μεγάροισιν·  
γηραιὸς δὲ θάνοι ἕτερον παῖδ' ἐγκαταλείπων.

*Let there be an only son for the paternal home,  
To fatten it up so that wealth will increase in his halls.  
May he die old who leaves a second child;*

This suggests that there existed a need to be able to maintain and protect an inheritance from physical attack, claims and counter-claims by invaders, neighbours and distant relatives, but also to prevent an estate from shrinking as it is divided between more and more legitimate sons.<sup>273</sup> These problems seem to have been especially important for the creators of written laws in Greek *poleis* who often set out orders of inheritance to fix the people to whom an estate is to be given and to reduce the possibility of claims being made from those outside the immediate family that could erode or excessively divide an *oikos* and its land holdings.<sup>274</sup>

In Homer, we can see a mechanism whereby legitimate sons could divide an estate, but this could easily lead to arguments about the value of the property to be allocated and the rights of individuals to a share. Odysseus tells a fictional story of how he was an illegitimate son who was disinherited by his brothers.<sup>275</sup>

Θάνερος ἀφνειοῖο πάϊς: πολλοὶ δὲ καὶ ἄλλοι  
υἱες ἐνὶ μεγάρῳ ἡμὲν τράφεν ἠδ' ἐγένοντο  
γνήσιοι ἐξ ἀλόχου: ἐμὲ δ' ὄνητὴ τέκε μήτηρ  
παλλακίς, ἀλλὰ με ἴσον ἰθαγενέεσσιν ἐτίμα

---

<sup>272</sup> *Op.* 376-78

<sup>273</sup> Gagarin, M. (1986, pp.121-22), Thomas, R. (2005, p.54), Aristotle, with particular reference to Lycurgus' Sparta seems to suggest that the practice of sons dividing inheritance put strain on resources, led to arguments and eroded ancestral estates, implying that such disputes were common and widespread in the Archaic Greek world (*Pol.* 1270a11-b5).

<sup>274</sup> *See pp.* 220-23

<sup>275</sup> *Od.* 14.200-210 cf. *Op.* 37-39, Gagarin, M. (1986, pp.34-35)



Κάστωρ Ὑλακίδης, τοῦ ἐγὼ γένος εὐχομαι εἶναι  
ὄς τότ' ἐνὶ Κρήτεσσι θεὸς ὧς τίετο δῆμῳ  
ὄλβῳ τε πλούτῳ τε καὶ υἰάσι κυδαλίμοισιν.  
ἀλλ' ἦτοι τὸν κῆρες ἔβαν θανάτοιο φέρουσαι  
εἰς Αἶδαο δόμους: τοὶ δὲ ζωὴν ἐδάσαντο  
παῖδες ὑπέρθυμοι καὶ ἐπὶ κλήρους ἐβάλοντο,  
αὐτὰρ ἐμοὶ μάλα παῦρα δόσαν καὶ οἰκί' ἔνειμαν.

*I'm a rich man's son, and many other sons  
were also born and raised in his palace,  
lawful ones by his wife. But a bought mother bore me,  
a concubine, but he honoured me as equal to his legitimate sons,  
did Castor Hylacides, of whose family I claim to be,  
who at that time among the Cretan people was honoured as a god  
for his happiness and riches, and his gloried sons.  
But then the spirits of death came to take him  
to the house of Hades. His arrogant sons  
divided his estate and cast lots for it,  
then gave me very little and allotted me a house.*

The story describes a mechanism whereby the sons of a deceased person could divide the inheritance into portions and used the process of casting lots (*klēroi*) to assign them which may also help to explain the more specific association of the word *klēros* with inheritance found in Hesiod.<sup>276</sup> The casting of lots is common for determining prizes, the order of lanes or turns in athletics or ritualised combat,<sup>277</sup> or who should take on a risky venture,<sup>278</sup> and this type of procedure may well have been an effective, customary means for reducing conflict when sons were left to inherit. When used for allotting shares of an inheritance, the mechanism of casting lots was probably meant to ensure that the process was conducted as fairly as possible: since the division of the estate occurred before the casting of lots it would have provided an incentive for making the division as equal as possible rather than risk being left with the smallest portion.

---

<sup>276</sup> See pp.82-83

<sup>277</sup> *Il.*3.314-17, 324-25, 23.352-53, 861-62

<sup>278</sup> *Il.*7.171-99, *Od.*9.331, 10.206

However, the story also illustrates the situation of those who may have had a partial claim to an inheritance but no right to participate in the allocation of the estate. Illegitimate or adopted sons could have been subject to what their brothers were willing to give them, while unmarried daughters would probably have had to receive their share in the form of a dowry to attract a husband. Odysseus' *alter ego* seems to be disappointed with the house and the small payment he is given, suggesting that he might reasonably have expected more than he got, though he had little option but to accept it. This suggests that customary norms dictated a procedure with a combination of negotiation between legitimate biological sons and the use of a random element to ensure fairness in this procedure, and that other children should receive a suitable allowance. However, there was no compulsory formula for working out what those of different status should receive and it seems likely that their exclusion from the negotiation would frequently have stacked the odds against them.

Hesiod's dispute with his brother seems to revolve around two major issues, the taking of more than one's fair share and the need to pursue disputes in the courts through the *basilees*.

ἤδη μὲν γὰρ κληῖρον ἔδασσάμεθ', ἄλλα τε πολλὰ  
 ἀρπάζων ἐφόρεις μέγα κυδαίνων βασιλῆας  
 δωροφάγους, οἱ τήνδε δίκην ἐθέλουσι δικάσσαι.

*For we had already split our inheritance, but seizing much,  
 You made off with it, to enhance the repute of our rulers  
 That bribe-swallowing lot who love to judge the case.*

The application of the term *klēros* 'lot' to mean 'inheritance'<sup>279</sup> suggests that the procedure Hesiod and his brother were using had grown out of a system similar to that described in the *Odyssey*, and that a customary method for splitting inheritances was in use that may have changed little in the intervening time between the two poems. Hesiod's use of the word *ēdē* (already) implies that the amounts had been agreed by both brothers and that Perses was flouting the accepted custom by taking more than his *klēros* and spending it on contesting with his brother. Hesiod gives us no real detail of how Perses achieved this, but it is possible that his suggestion that he was giving it to the *basileis* and his earlier injunction to avoid

---

<sup>279</sup> Cf. its use in *Il.*15.498, *Od.*14.64, *Op.*341

*agorai* if he cannot afford it<sup>280</sup> imply that Perses was using the courts to win some of Hesiod's share of the property. This suggests that, while there were accepted systems for dividing inheritances fairly, the division of bequests was a persistent source of conflict in archaic Greek *poleis* and this is borne out by the space it continued to occupy in written laws, with inheritance legislation, the divisions of bequests and orders of succession forming some of our most complex surviving legal texts.<sup>281</sup>

## 5. Trial proceedings

We also have some interesting insights into the ways that trials might have been conducted and the types of evidence that might have been brought to bear in order to make one's case. In the Homeric Hymn to Hermes, it is up to Apollo to find all the relevant evidence, attempting to track down his cattle, interrogating the old man who witnessed the theft and resorting to religious methods to attempt to prove the infant god's guilt. Likewise, Hermes' 'forensic awareness' reveals the types of evidence he expects Apollo might use to sway his father and he uses every trick in the book to mitigate everything that could be used against him. Having prevented the cattle themselves being found his one mistake is to be spotted by an old man. Realising the danger he poses, Hermes rebukes him, invoking the fact that he has not personally been hurt by this crime in the hope that he might prevent him from telling anyone what he has seen:<sup>282</sup>

ὦ γέρον ὅς τε φυτὰ σκάπτεις ἐπικαμπύλος ὄμους,  
ἦ πολυοινήσεις εὖτ' ἂν τάδε πάντα φέρησι  
καί τε ἰδὼν μὴ ἰδὼν εἶναι καὶ κωφὸς ἀκούσας,  
καὶ σιγᾶν, ὅτε μὴ τι καταβλάπτῃ τὸ σὸν αὐτοῦ.

*Old man, whose shoulders are bent as you dig round the roots,  
But you will harvest much wine when your allotment bears fruit  
Even though you see, be blind and deaf though you hear  
Not a word! Since nothing of yours has been damaged.*

---

<sup>280</sup> *Op.*27-36

<sup>281</sup> See *pp.*220-23 Cf. Dem.43.51, 54 & 75, 46.14, Is.11.1-30, Plu. *Sol.*21.3-4, *IC* IV.72.4.39-46, *GP* G15 & 17-21)

<sup>282</sup> *HH* 4.90-93

This emphasises the reliance on witnesses to capture and prosecute thieves and demonstrates Hermes' awareness of the role the old man could play in his trial.<sup>283</sup> Moreover, the similarity between the argument that the old man should stay out of it '*since nothing of yours has been damaged*' and Hesiod's advice against his brother getting involved in *agorai* unnecessarily<sup>284</sup> suggests that Hermes may be attempting to exploit a general reluctance among poorer members of society to get involved in disputes that do not directly concern them.

Apollo's investigation leads him to the old man, who offers his evidence, but claims not to have seen it clearly.<sup>285</sup> His information is instrumental in allowing Apollo to confirm that the cattle have been stolen and he gives precise details about how Hermes has created the mass of footprints and his description of the boy carrying a staff makes it clear to Apollo who the culprit is:

ὦ φίλος ἀργαλέον μὲν ὄσ' ὀφθαλμοῖσιν ἴδοιτο  
 πάντα λέγειν· πολλοὶ γὰρ ὁδὸν πρήσσουσιν ὁδίται,  
 τῶν οἱ μὲν κακὰ πολλὰ μεμαότες, οἱ δὲ μάλ' ἐσθλὰ  
 φοιτῶσιν· χαλεπὸν δὲ δαήμεναί ἐστιν ἕκαστον.  
 αὐτὰρ ἐγὼ πρόπαν ἦμαρ ἐς ἠέλιον καταδύντα  
 ἔσκαπτον περὶ γουνὸν ἀλωῆς οἰνοπέδοιο·  
 παῖδα δ' ἔδοξα φέριστε, σαφὲς δ' οὐκ οἶδα, νοῆσαι,  
 ὅς τις ὁ παῖς ἅμα βουσὶν εὐκραίρησιν ὀπήδει  
 νήπιος, εἶχε δὲ ράβδον, ἐπιστροφάδην δ' ἐβάδιζεν,  
 ἐξοπίσω δ' ἀνέεργε, κάρη δ' ἔχεν ἀντίον αὐτῷ.

*My dear fellow, it is hard to speak of all that I have seen  
 For many travellers make their way along this road,  
 Some of them plotting much evil and others good,  
 They wander about, and it's hard to examine each one.  
 I had been digging all day, till sunset,  
 Around the slope of my vineyard, here it's richest in wine.  
 But I think that I noticed, your honour, though I do not remember clearly,  
 A certain boy, and with him some well-horned cattle,*

<sup>283</sup> Papakonstantinou, Z. (2007, pp.95-101)

<sup>284</sup> *Op.*27-36

<sup>285</sup> *HH* 4.202-11

*An infant, he was, and he held a wand and walked about here and there,  
And he drove them backwards, keeping their heads towards him!*

However, the difficulty of relying on this kind of evidence alone is highlighted by Hermes' efforts to persuade the old man to hold his tongue as well as the old man's protestations that he cannot remember every single person that has passed him that day. Witnesses needed to come forward, but their evidence might well be confused and they might easily be influenced by bribery or threats. In this instance it is sufficiently incriminating as the old man's description explains the main issues adequately, but the way that the hymn expresses it is suggestive of issues that might arise when trying to prosecute someone for theft or fraud.

Individuals could also harness the power of the gods to bolster arguments or even settle cases through the swearing of oaths: effectively taking on the risk of divine wrath if they turned out to be lying and transferring responsibility for a decision to the gods. It is this need to harness the psychological effects of the divine that lies behind Menelaus' oath-challenge to Antilochus when he has cheated in the chariot-race.<sup>286</sup> Moreover, the fact that oaths and oath-challenges would come to be enshrined in written legislation for judges or litigants<sup>287</sup> suggests that these were an accepted means for deciding a case in many archaic Greek communities.<sup>288</sup> However, oaths too were vulnerable to manipulation and could even be sworn deceptively. Hermes offers to swear oaths in an effort to prove his innocence which, as Fletcher has argued, are actually in themselves elaborate deceptions.<sup>289</sup> It is also common for deceitful gods and heroes to offer to swear oaths which they cannot keep in order to support their cases, though, as Callaway has pointed out, they do not go as far as swearing a lie and their cunning is often shown by their ability to evade the facts of the case in order to create a true oath which gives them the appearance of innocence.<sup>290</sup>

The false swearing of oaths in Archaic Greek litigation was condemned in the norms of a society which presumably saw it as an essential cornerstone of the mechanisms for cementing agreements and proving honesty before the existence of written records.<sup>291</sup> Hesiod's emphasis on honesty when it comes to swearing oaths makes it probable that these

---

<sup>286</sup> *Il.*23.579-85

<sup>287</sup> Cf. *IC IV* 72.3.5-9 *see pp.*206-9

<sup>288</sup> Gagarin, M. (1986, pp.40-43; 2007, pp.40-47), Thür, G. (1996, pp.59-62)

<sup>289</sup> 274-5 & 383-9 Fletcher, J.A. (2008, pp.20-22), Papakonstantinou, Z. (2007, pp.101-106)

<sup>290</sup> Cf. *Il.*15.36-40, *HH* 4.274-76, 383-39. Callaway, C. (1993, pp.15-24; 1998, pp.159-69) cf. Gagarin, M. (2007, pp.43-47)

<sup>291</sup> Thür, G. (1996, p.69), Papakonstantinou, Z. (2007, pp.106-109) cf. *Op.*190, 219

were an important validation of the original agreement between him and his brother or were used in the subsequent trial. However, in the absence of documentary evidence, the system is heavily reliant on both the parties and any witnesses being honest and respecting the oaths they have sworn; a problem that clearly troubles Hesiod in his fears for society as a whole if basic honesty and familial respect are not upheld.<sup>292</sup>

There also seem to have been concerns that trial mechanisms could entice those officiating them to indulge in corrupt practices or might attract the unscrupulous or foolish. Both the ruinous cost of law suits and the effects they might have on his morals seem to be behind Hesiod's advice to his brother that they are best avoided.<sup>293</sup>

ὦ Πέρση, σὺ δὲ ταῦτα τεῶ ἐνικάτθεο θυμῶ,  
μηδέ σ' Ἔρις κακόχαρτος ἀπ' ἔργου θυμὸν ἐρύκοι  
νείκε' ὀπιπεύοντ' ἀγορῆς ἐπακουδὸν ἐόντα.  
ῶρη γάρ τ' ὀλίγη πέλεται νεικέων τ' ἀγορέων τε  
ᾗτινι μὴ βίος ἔνδον ἐπηετανὸς κατάκειται  
ῶραϊος, τὸν γαῖα φέρει, Δημήτερος ἀκτὴν.  
τοῦ κε κορεσσάμενος νείκεα καὶ δῆριν ὀφέλλοις  
κτῆμασ' ἐπ' ἀλλοτρίοις. σοὶ δ' οὐκέτι δεύτερον ἔσται  
ᾗδ' ἔρδειν: ἀλλ' αὖθι διακρινώμεθα νεῖκος  
ἰθειήσι δίκης, αἶ τ' ἐκ Διὸς εἰσιν ἄρισταί.

*And you, o Perses, set these things in your heart.*

*Lest evil-loving Strife keep your heart from work and*

*You begin spying and listening in on the feuds that are in the agora.*

*For short indeed is the season for both disputes and agorai,*

*For the man that does not have enough to sustain him lying at home,*

*In season, which the Earth brings forth, the grain of Demeter.*

*When you have your fill of that, then you may seek advancement from disputes and  
fights*

*For the possessions of others; and you will get no second chance*

*To do so. Let us however decide our dispute*

---

<sup>292</sup> *Op.*190, 219, 283

<sup>293</sup> *Op.*27-36

*With straight judgements, the best of which are from Zeus.*

This passage warns against getting involved in disputes (*neikea*) in the *agora* on account of both the costs and risks they entailed, and anxieties that individuals might be lured into disputes that were not their concern in order to capitalise on the possibility of rewards and compensation. The fact that Hesiod expresses a fear of Perses attending and taking too much of an interest in *agorai* (29) and instructs him that those who do should not do so at the expense of amassing sufficient stores (30-34), suggests that individuals with the leisure to attend hearings might reap rewards, perhaps in a share of the compensation, for acting as witnesses or judges. Likewise, Hesiod's allegation that Perses used their inheritance to ensure that the *basilēas dōrophagous* (bribe-devouring rulers) found in his favour<sup>294</sup> suggests that those officiating cases could also be seen to be cashing in on either bribes<sup>295</sup> or fees.<sup>296</sup> This suggests that there were financial incentives for those involved in trials and that this left the system open to accusations of abuse like Hesiod's disgust at those who profit from manipulating the system to take another's wealth and his allegations of *skoliai dikai* by magistrates.

Concerns about trials also feature heavily in the earliest written legislation which from the outset began to regulate the powers that officials had and used procedural rules to govern the ways that disputes were to be conducted. That said, they also continued to make explicit use of oaths and witness testimony in disputes, enshrining the ways they could be used as evidence to decide cases. The level of involvement of third parties also seems to have especially mattered to the creators of the earliest Athenian laws, with efforts to encourage participation by third party prosecutors through the 6<sup>th</sup> century introduction of the *graphē* which allowed anyone (*ho boulomenos*) to prosecute cases, often providing financial rewards for those who brought cases, but there were also cultural objections to those who sought to profit from disputes (*sykophantai*) that were not their immediate concern. This shows not only how this transformation of disputes into financial transactions could be harnessed to the

---

<sup>294</sup> *Op.*38-39

<sup>295</sup> Ulf, C. (2009, pp.93-94), Ober, J. (2015, p.399)

<sup>296</sup> Roebuck, D. (2001, pp.75-76)

benefit of third parties, but that cultural beliefs in its corrupting influence were also never far away and existed as much after the appearance of written law as before it.<sup>297</sup>

#### IV. Catalysts of Change

##### 1. The Challenges of the Archaic *Polis*

The territorial and population expansion and the increasing concentrations of people in urban areas during the 8<sup>th</sup> and 7<sup>th</sup> centuries created huge opportunities, but also significant challenges. Increasing populations meant that finite resources had to be shared with greater numbers of people and the benefits of trade were not equally felt by all. The power of elites increased as their decisions affected far greater numbers of people, while the competition that was an inherent part of Greek culture may well have led to destabilising family rivalries and attempts to concentrate power.<sup>298</sup> The distribution of a family's inheritance seems to have caused a large number of disputes as brothers and extended families vied for control over estates and those left with little in the wake of such conflicts could have faced debt or slavery. The increases of territory and population also meant that the inhabitants of cities were more diverse, with itinerant or foreign traders doing business with more permanent residents meaning that the continuing use of kinship or reciprocal ties to conduct business became more complex and harder to rely on.<sup>299</sup> The creation of colonies may have helped ease population pressures and enabled better exploitation of resources, but would amount to the creation of a functioning community more or less from scratch, often from a disparate collection of people and thus necessitated the rapid establishment of systems of rules and institutions.<sup>300</sup>

The solutions to these problems would involve significant efforts to re-structure the societies of Greek *poleis*, often with the aid of the new technology of writing alongside manipulation of existing forms of social control to reinforce and perpetuate reforms. The deliberate restructuring of society was probably more gradual than the traditions of lawgivers suggest and it is likely that many changes were attributed to these legendary figures either

---

<sup>297</sup> Cf. Dem. 21.103, 37.45-48; Hyp. *Eux.*34 MacDowell, D. M. (1978, pp.62-66), Osborne, R. (1990, pp.83-102), Harvey, D. (1990, pp.103-21), Todd, S. C. (1993, pp.92-94), Roebuck, D. (2001, pp.42-43), Lanni, A. (2016, pp.49-55)

<sup>298</sup> Ober, J. (2015, pp.11-12)

<sup>299</sup> Morris, I. (2009, pp.66-75), Morgan, C. (2009, pp.56-62), Ober, J. (2015, pp.84-100)

<sup>300</sup> Gagarin, M. (1986, pp.129-30), Murray, O. (2000, pp.236-37), Raaflaub, K. A. (2000, p.43), Morris, I. (2009, pp.67-72), Ober, J. (2015, p.41)



because the association would help to propagate the event or later writers retrojected their beliefs onto their communities' famous forefathers.<sup>301</sup> Nevertheless, the changes that came about were significant and do appear to have been intended to tackle serious social problems. In particular the use of writing for political and legislative purposes enabled the drawing together of language and monuments meaning that communities could be given a singular, lasting voice regardless of the multiplicity of arguments, conversations and meetings that had produced it. Public inscriptions, from the 7<sup>th</sup> century onwards, which either explicitly or implicitly acknowledge the *polis*, people and gods as the loci of legislative authority suggest that these were seen as important sources of law among many Greeks. Communities continued to debate and disagree, but the results of meetings could ultimately be expressed clearly in stone, wood or bronze and, using their existing normative language, could be referred to or appealed to in the future as a durable, physical source for the *polis*' normative culture.

Each *polis* was self-governing and consequently each state's solutions were different, addressing their perceived issues in unique ways that made innovative use of the tools available. We have early evidence of Cretan *poleis* like Dreros and Gortyn, perhaps under the influence of Phoenician colonists, making extensive use of written inscriptions to set penalties, establish procedures and restrict the powers of officials.<sup>302</sup> 6<sup>th</sup> century Athens, after an initial attempt at codification of rules by Drakon, saw Solon try to address the economic and social imbalances caused by the runaway wealth and disputes of the rich using socio-economic reforms supported by written laws and poetic treatises.<sup>303</sup> The region of Lokris saw significant local colonisation with a number of *poleis* appearing in the area between the 8<sup>th</sup> and 6<sup>th</sup> centuries, and the large number of legal texts and treaties between Lokrian cities and their founding settlements shows that the written word was an important tool for establishing laws in these communities and clarifying their relationships to one another.<sup>304</sup> Sparta's territorial expansion to control the Messenians and *perioikoi* both enabled and compelled them to create a society based on military organisation, achieved through a system of education which relied on members constantly to reiterate their values in the belief that written laws were unnecessary

---

<sup>301</sup> Hölkeskamp, K-J. (1992, pp.52-80), Murray, O. (2000, pp.236-37), Raaflaub, K. A. (2000, pp.42-48), Papakonstantinou, Z. (2008, pp.60-68)

<sup>302</sup> Gagarin, M. (1986, p.126-29)

<sup>303</sup> Anhalt, E. K. (1993, pp.141-44), Lewis, J. D. (2006, pp.4-7 & 15-20)

<sup>304</sup> Gagarin, M. (1986, pp.94-95), Hölkeskamp, K-J. (1992, pp.78-80)

for the wellbeing of such a society.<sup>305</sup>

While these changes were significant and differed from *polis* to *polis*, they still stem from broadly similar communities operating in networks which shared a number of linguistic and cultural features. Status and political influence continued to be differentiated, but elite families were forced to adapt to restrictions on their behaviour, transferring their competition for wealth and status to new avenues like seeking election for annual offices, while *politai* began to emerge as a distinct group with rights, powers and expectations that set them apart from slaves or foreigners.<sup>306</sup> Kinship groups, geographical or political associations continued to fulfil functions of bringing young men up and supporting their members in litigation or acts of self-help, but their role grew increasingly political and they were even manipulated by the *polis* to facilitate dissemination of norms, regulation of members, selection of officials and prosecution of offenders.<sup>307</sup> As we shall see in Chapter 4, the practice of publishing laws as inscriptions had some profound effects on the normative cultures of those Greek *poleis* that adopted it – fixing penalties and enshrining procedures – but often remained rooted in many of the values, practices and language that appear in our earliest literary sources, and continued to be viewed in light of both earlier wisdom and the traditions of stories and poems that grew up around them.

## 2. The Influence of the East

The Greeks were not the only ‘city-state’ civilisation in the Mediterranean, nor even the first, with the Phoenicians, Etruscans and Italian tribes all developing similar settlements across the region which were learning skills, stories and social and economic models from one another.<sup>308</sup> Consequently, the Greek communities of the Bronze Age through to the Archaic period were far from isolated, flourishing on trade, exchange and conflict, and it is therefore important to situate Greek social systems and traditions in the wider context of the Eastern Mediterranean and its peoples. Merchants, craftsmen, poets and mercenary soldiers all

---

<sup>305</sup> MacDowell, D. M. (1986, pp.1-4), Gagarin, M. (1986, pp.53-54), Thomas, R. (1996, pp.15-26; 2005, pp.44-46), Papakonstantinou, Z. (2008, pp.74-76), Ober, J. (2015, pp.137-43)

<sup>306</sup> Ober, J. (2015, pp.123-55)

<sup>307</sup> Ulf, C. (2009, pp.90-91), Rhodes, P. J. (2000, p.469), Humphreys, S. C. (1978, pp.194-208)

<sup>308</sup> Murray, O. (2000, pp.237-38), Thomas, C. G. (2009, pp.30-31), Ober, J. (2015, pp.7-8, 54-56)

travelled throughout the region and would have encountered both the peculiarities and the shared features of the cultures that surrounded them. This process can be seen in the transfer of artistic skills into Archaic Greek architecture, sculpture, jewellery and pottery and in the assimilation of poetic formulas, motifs and narrative traditions stretching both across the Near East and far back in time.<sup>309</sup> This suggests that Greek culture was exploring, learning from and assimilating traditions that had started far away and had been passed on across huge swathes of space and over many centuries. As we shall see in the next chapter, Near Eastern poetic traditions included formulas associated with rules and social mores, while diplomatic and commercial relations between Greek communities and their Near Eastern neighbours must have relied on a shared normative language for conducting negotiations and of oaths for sealing agreements.

It is therefore likely that there was some exchange of normative ideals, institutions and technologies that helped build the frameworks of rules and institutions we find in Archaic Greek communities.<sup>310</sup> This can be seen in the expressions and concepts of both their oral normative culture and the similarities between the structure and content of their written laws and those of the Near East which speak of similar concerns, practices and solutions.<sup>311</sup> The transmission of Near Eastern social patterns, rules and regulations through stories, wisdom poetry and debate would have been recognisable to Greek speakers in their competitive, communal, oral world and as such it would have been natural for them to assimilate rules and normative practices from their neighbours, just as they were incorporating their story tropes and literary diction. This can be seen in Westbrook's analyses of the solutions for rectifying criminal offences in Near Eastern societies, which also have recourse to hearings to determine the most appropriate means of restitution from the options of community-sanctioned self-help and compensation offered as equivalent value goods or expressed as multiples of the value of

---

<sup>309</sup> Raaflaub, K. A. (2000, pp.50-52), West, M. L. (1997, pp.10-14). Burkert, W. (1992, pp.9-33, 41-46 & 88-127) describes the possible mechanisms by which craftsmen, singers and sages could have moved around the Mediterranean, the motivations for which are explored in greater depth by Bachvarova, M. R. (2016, pp.200-18). The effect of this mobility and the shared culture on spoken discourse can be seen in West, M. L. (1997, pp.170-275) who lists a huge array of correspondences between tropes of Near Eastern and early Hellenic literature. Bachvarova, M. R. (2016, pp.266-300) has conducted a very detailed study of the components of this tradition and the points of contact between Near Eastern works and early Greek Epic.

<sup>310</sup> Murray, O. (2000, pp.236-38), Raaflaub, K. A. (2000, pp.52-57) Ober, J. (2015, pp.23-44 & 55-56), Morris, I. (2009, pp.66-80)

<sup>311</sup> Gagarin, M. (2008, pp.146-59), Raaflaub, K. A. (2000, pp.52-57), Weinfeld, M. (1973, pp.192-99)

any damages, and could well have been mechanisms common to both the communities of Greece and those of the Near East as far back as the Bronze Age.<sup>312</sup>

As alphabetic writing spread across the peoples of the Mediterranean, it allowed further technical, political and social developments to be transmitted from community to community. Not least of these was the Near Eastern tradition of political and social use of inscriptions which enabled laws and decrees to be published and preserved. Parallels between Near Eastern written laws and those found in 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> century Greek settlements suggest not only common problems, but similar practical and linguistic solutions. Therefore, just as Israelite editors and copyists around the time of the Greek Archaic period were adapting traditional rules to suit their cultural and historical experiences, Greek speakers were making Near Eastern rules, social structures and technologies their own, translating them into their language and traditional vocabulary, but also adapting and reinterpreting them to suit their own societies.

This is not to say that the Greeks were exclusively borrowing their normative culture from the Near East, with their selection, interpretation and application of rules being heavily coloured by their own histories, identities, societies and, as we shall see in the next chapter, normative language. Without a ‘scribal class’, with literacy relatively widely dispersed among the population<sup>313</sup> and with a *polis*-culture that tended towards hierarchical but communal institutions it appears to have been rare for a Greek law to claim that it came from an all-powerful individual like a ‘king’ or a god as we find in texts like the *Codex Hammurabi* or the biblical Pentateuch. Instead, we see prescripts proclaiming the *polis* authorities that ratified the legislation and the divine sanctions that supported it. Thus, the texts of Greek written laws tend to attribute themselves to the *polis* or *ethnos* of the community as a whole and names, when they do appear, are mostly for the purposes of demonstrating that due process was followed and establishing the date of the text, typically referring to officials with annual offices. Greek legal texts are therefore more ‘citizen-centred’ in their content, restricting the action of officials and placing considerable emphasis on the operation of institutions and the law itself.<sup>314</sup> Moreover, the adoption of monumental inscriptions in Greek *agorai* for both symbolic and practical purposes suggests that written laws were meant to be used by ordinary citizens and were acquiring great cultural significance in their own right. The particular type of social organisation in the Archaic Greek *poleis* and the challenges of applying it to larger, more

---

<sup>312</sup> Westbrook, R. (2015, pp.1-17)

<sup>313</sup> Papakonstantinou, Z. (2002, pp.137-40), Gagarin, M. (2008, pp.176-77), Kristensen, K. R. (2008, pp.1-9), Wilson, J-P. (2009, pp.556-57), Lanni, A. (2016, p.84)

<sup>314</sup> Ober, J. (2015, pp.6-18)

connected communities provided incentives both to adopt different features of normative culture and to innovate methods of integrating them into a distinctively Greek system of beliefs, morals, laws and institutions. This in its turn would mould the social structures of the *poleis* as complex fixed rules accreted over time and, administered by each community's distinctive customs and institutions, would become fundamental parts of each city's identity.<sup>315</sup>

### Conclusions

The poems of the Homeric corpus and of Hesiod offer a number of important clues in their representations of *poleis* that suggest a world where 'oral' or 'customary' laws were a necessary part of the way that they functioned. The 8<sup>th</sup> and 7<sup>th</sup> century *poleis* were characterised by communal institutions in significant places with strict rules (*themistes*) for conducting meetings, disputes and debates, with our sources articulating norms concerning appropriate behaviour, community hierarchies and the expectations of kinship groups. We can see evidence of rules that governed not only the main 'trouble-cases' that could lead to disputes in these societies, but also the appropriate means of resolving them, whether through self-help, negotiation of compensation, exile or more complex processes like the allocations of inheritances or the methods for summoning witnesses in adultery cases. The existence of such rules and patterns of behaviour and the belief articulated by the earliest hexameter poets that they were essential to civilised living in the early *polis*, suggest that they were the manifestations of a thriving 'legal' culture with normative structures and institutions for ensuring that disputes were formally resolved in a way that was authoritative and accountable to the community. However, none of these sources makes any mention of the use of writing in the processes described, making it highly likely that such rules were communicated by word of mouth as a form of 'oral law'. As we shall see in the next chapter, the rules behind this normative culture were expressed through a complex vocabulary of norms, speech-acts and formalised diction for making arguments and pronouncements which were underpinned by their explicit associations with divine justice and their importance to community stability, and thus had the authority and prescriptive power to have operated as 'oral laws'.

These norms were part of wider cultural traditions that were both highly malleable and able to preserve a variety of rules and beliefs from different times and places, meaning that the concerns and practices of Greek communities were both consciously and unconsciously connected to their history and their place in the networks of communities that characterised the

---

<sup>315</sup> Ober, J. (2015, pp.38-40)

Iron Age Eastern Mediterranean. As communities in the Archaic period became larger and more economically, socially and ethnically diverse, their institutions similarly had to adapt and we can see this in the legal texts which began to emerge during this period. The adoption of writing was part of a wider cultural exchange with the peoples of the Near East which brought with it traditions of poetry and methods of expressing rules and shared beliefs. In the next chapter, we shall examine how some of these could have been assimilated into the cultures of Greek communities along with normative didactic poetry, oath-forms and written law, but were also adapted to suit the Greeks' own traditions and societies.

## Chapter 2

### ‘Oral Law’ and the Origins of a Greek Legal Vocabulary

Following the collapse of the Mycenaean palaces with their scribal culture, it appears that the technology of writing disappeared from the Greek world until the end of the Iron Age when Greeks began adapting the Phoenician alphabet.<sup>316</sup> We have no evidence to suggest that the Mycenaeans recorded laws or jurisprudential discussions in the manner of Hittite or Babylonian kings<sup>317</sup> and our earliest written legal texts are from the late 7<sup>th</sup> century BCE: at least a century after the adoption of the Greek alphabet. It therefore seems likely that the ‘legal’ rules that were operating in Greek communities before this time must have been transmitted and formulated orally and that traditions of behaviours, norms, stories and songs not only preserved important information but also shaped how they were expressed and transmitted.<sup>318</sup> Such common values and a shared, authoritative vocabulary for communicating rules and information were vital for the effective functioning of early Archaic *poleis* and the commercial, religious and political activities conducted in them.<sup>319</sup>

The *themistes* which Homer expects in societies and seems to understand as both rules and judgements<sup>320</sup> were the manifestations of this normative framework, describing the expectations individuals had of their relationships with one another and with society as a whole. Further hints as to the nature of this culture of ‘oral law’ emerge when one examines the shared beliefs and traditional modes of expression that guided and dictated what community members could reasonably expect, constraining them to follow their society’s procedures and enabling rules to be formulated that were recognisably ‘legal’. This can be seen in the communal dispute resolution forums and the competitive spoken culture depicted in Homeric epic, with its persuasive speeches of debating characters or their advisory use of stories and *gnōmai*. Likewise the didactic poetry of Hesiod’s *Works and Days* bombards the listener with pithily-expressed normative statements, punctuated by direct exhortations to his addressees and longer narratives to persuade the audience of the inherent truth of the poet’s

---

<sup>316</sup> Wilson, J-P. (2009, pp.542-47)

<sup>317</sup> Shelmerdine, C. W. (2008, p.12), Westbrook, R. (2003, pp.5-31)

<sup>318</sup> Roth, (1976, pp.333-36), Harris, E. M. (2004, pp.21-22)

<sup>319</sup> Ober, J. (2015, pp.54, 103-4)

<sup>320</sup> See pp.38-44

argument.<sup>321</sup> In this way, both the narrative and didactic traditions of early Greek poetry demonstrate an ability to call upon and manipulate a traditional vocabulary of norms, stories and beliefs, revealing the forms of diction and social contexts that conferred coercive and hortatory power on their rules.

This is not to say that such principles and ideals were common to all the *poleis* of Archaic Greece or that they shared an identifiable common origin:<sup>322</sup> there is nowhere near enough coherence in the laws of Greek *poleis* to suggest anything like the unity implied by the term ‘Greek law’, as each *polis* developed its legal culture in its own distinctive way, and even where orators argue for the universal good sense of the norms they invoke, they seem to regard both the shared legal rules and the unusual ones as characteristic features of the diverse legal systems among Greek *poleis*.<sup>323</sup> However, the common norms, practices and language that we find in laws throughout the Greek world do suggest some cultural commonalities behind the frameworks of rules and modes of expression which legal inscriptions could be formulated and composed around.

All *poleis* appear to have regarded themselves as ‘law-abiding’ and, while exceptions abound in the multifarious Greek states of the Archaic and Classical periods, broad areas of convergence can be observed in their invocation of divine and popular sanction for the creation and application of law, the social architecture of *poleis*, their methods for resolving disputes and their normative language. Several key areas, such as interests in preserving inheritances down family lines and distinctions between citizens, foreigners and slaves,<sup>324</sup> appear to have acquired especial importance as *poleis* expanded and competition for resources and land intensified, with *poleis* perhaps learning from one another when embedding these divisions in their laws. However, some also seem to have stemmed from existing social norms, such as the continued use of terminology for offence and procedure,<sup>325</sup> their manipulation of earlier tribal designations in their developing constitutions<sup>326</sup> and the

---

<sup>321</sup> Knudsen, R. A. (2014, pp.123-24)

<sup>322</sup> Carey, C. (2018, p.1 n.)

<sup>323</sup> Cf. Dem.24.139-43 who praises the extraordinary conservatism of Lokrian lawmaking with a curious tale of the threat of execution for those who propose new laws which do not achieve community approval. By contrast, Lysias in 1.2 describes adultery as an offence that was uniquely abhorred among Greeks and deemed worthy of summary execution, again showing that normative consistency was not to be expected between the laws of different *poleis*.

<sup>324</sup> Sealey, R. (1994, pp.61-89), Humphreys, S. C. (1988, pp.466-81)

<sup>325</sup> See pp.189-94

<sup>326</sup> See pp.52-53



similar syntactical structuring of laws to collections of rules found in Homeric and Hesiodic poetry.

In the previous chapter we examined the social and ideological conditions during the development of the Archaic *polis*, the component parts of their institutions and the responses to particular issues that we can observe in the poetry of Homer and Hesiod.

The language of these customs – the *themistes* – is essential to understanding how norms were composed, applied and differentiated, and how they influenced the development of the legal language that appears on later inscriptions. The purpose of this chapter is to examine the normative discourse of our earliest poetic sources and observe the ways in which rules and beliefs were communicated, interpreted and used. It will consider the usages of *gnōmai* both as simple expressions of abstract morality and as a means of setting out more explicit consequences, revealing an understanding of ‘justice’ among Archaic poets that was both a divinely sanctioned abstract and which could be clearly articulated as simple rules for behaviour. It will also show the ways that the casuistic language of cause and effect could be used in both *gnōmai* and oaths to create collections of rules that could account for their effects on multiple persons, address a variety of hypothetical outcomes, facilitated the navigation of complex social situations and allowed norms to be clearly communicated and remembered.

It will also explore the relationship between this Greek normative language and similar dictions and syntactical structures in Near Eastern legal and literary texts which suggest that there was considerable interaction between Greek, Semitic and Anatolian traditions which contributed significantly to the Greek vocabularies and media for rule-formation and transmission. This is not to say that there was a shared ‘pan-Mediterranean’ legal culture of the type found across the Near East,<sup>327</sup> rather that the cultural contacts that occurred between the peoples of the Eastern Aegean could well have influenced the development of law in Greek *poleis*, both before the development of legal writing in the Greek world and after it. Indeed, as Westbrook has observed, the formulations of Greek legal inscriptions and those of the Near East are remarkably similar,<sup>328</sup> and the structure and formulation of the covenant law books of the Hebrew Bible in particular suggest a similar level of syntactical patterning to both the written laws of the Greek world and to the collections of norms found in Homeric and Hesiodic poetry. These similarities are suggestive

---

<sup>327</sup> See pp.124-28 Bachvarova, M. R. (2007, pp.179-80), Blenkinsopp, J. (1992, pp.200-4), Walzer, M. (1994, p.107), Raaflaub, K. A. (2000, pp.50-55) Westbrook, R. (2003, pp.1-24)

<sup>328</sup> Westbrook, R. (2015, pp.58-68)

of both their responses to comparable pressures, but also of the capacity for such norms and the means of organising them to be passed from culture to culture both orally and in written form, much as skills, technologies and literary or artistic tropes permeated between these neighbouring cultures from the Archaic period to as far back as the Bronze Age.

From their combination of social structure and authoritative diction this chapter will aim to build a picture of the types of ‘oral laws’ that underpinned Greek communities of the 8<sup>th</sup> and 7<sup>th</sup> centuries and to show how the normative language, traditions, beliefs and contacts of Archaic *poleis* informed both the composition and application of the written laws which are the subjects of the next two chapters. It will also argue that the diction and political sense behind the evolution of law in Greek *poleis* was rooted in a normative culture that influenced the legal inscriptions that several *poleis* began to put up, utilising existing institutions and adapting them to suit their own pressures and sense of *polis*-identity. Finally, it will consider how similar features could appear in normative texts from the Near East, using not only the legal inscriptions of Bronze Age kings, but also considering how they could be incorporated into the narrative traditions of the Hebrew Bible and thus the ways that the Greeks’ poetic and persuasive normative diction could be reflected in their own legal texts.

### I. What did ‘Oral Laws’ look like?

As we saw in Chapter 1, the Greek *poleis* of the early Archaic period had a number of shared concepts about how to resolve disputes, the types of offences that mattered to them, and appropriate responses to aberrant behaviours before the arrival of written law. While there is no evidence to suggest the existence of a coherent collection of rules that was somehow recorded or learned, we do find a clear sense of understood normative parameters and procedures for dealing with particular crimes which can be regarded as ‘legal’ both in the sense that they were accepted prescriptive rules, and that they were used to administer justice through formalised processes and structures.<sup>329</sup> However, we must now consider what the individual rules that governed the ‘oral law’ of the Greeks of this period may have looked –

---

<sup>329</sup> This fits with the definitions used in this thesis which are looking for both rules for behaviour and normative institutions for upholding them and adjudicating disputes through the institutions described in Chapter 1 and the syntactical features of law which are the subject of this one. In particular, we have observed institutions, beliefs and hierarchies which allow the consistent application of rights, obligations and sanctions required by Pospíšil, required Hart’s primary and secondary rules to function and could be observed in the adjudication of ‘trouble-cases’ See pp.17-27

or rather sounded – like to those who were using them. While we cannot point to anything resembling a coherent collection of exclusively legal rules from the time of Homer and Hesiod, we do have some evidence to suggest the form that legal rules could have taken before the arrival of written inscriptions, with a developed vocabulary of justice, offence and procedure and strikingly similar syntax and structure to the language of both later legislation and to the legal cultures of the Greeks' Near Eastern neighbours.

The normative language of the Greeks of this period, is an essential component in identifying the rules governing communities and their institutions, and demonstrates some crucial features that identify rules as 'legal'. Our sources show an understanding of a concept of 'justice' which provided the social, linguistic and religious authority to impress 'legal' rules on members of a community and came to epitomise the social structures that made up their institutions and the decisions that issued from them. We also find the ingredients of law in their use of a language for expressing norms that comprised of not only a specific vocabulary of offences and procedures, but also made use of a syntax that enabled the articulation of consequences, the formulation of terms and agreements and the capacity to produce complex collections and sequences of rules.

Statements describing actions as 'just' or 'unjust', and truisms about the consequences of particular actions broadly conform to Aristotle's definition of *gnōmai*: general statements of fact that can be used as premises of enthymematic arguments.<sup>330</sup> Consequently, they appear in the persuasive passages of both Hesiodic didactic poetry and the competitive or advisory speeches of characters in Homeric epic and it is their essential accepted truth that holds the key to their rhetorical power and their value as a source of 'oral law'. This is not to say that these were oft-repeated mantras or proverbs; Homeric and Hesiodic gnomic expressions are only occasionally repeated verbatim in the poems,<sup>331</sup> and similar beliefs can be espoused by different *gnōmai*. Instead, we should think of these *gnōmai* as composed – like epic poetry – from a patterned, formulaic language and a shared set of values, beliefs and practices.<sup>332</sup> However, the generalised nature of gnomic expressions and their importance in both poetic rhetoric and wisdom literature suggests that they had an important normative function, shaping behaviour by comparing a given course of action to an accepted ideal or

---

<sup>330</sup> Arist. *Rhet.* 2.21.1394a19-95b19 Lardinois (1995, pp.7-12), Knudsen, R. A. (2014, pp.78-79)

<sup>331</sup> A couple of examples of repeated *gnōmai* can be found at *Il.*17.32 = 20.198, *Il.*2.24-25 = 61-62, *Il.*16.688-90 = 17.176-78. The repetition of *gnōmai* tends to occur when characters repeat speeches shortly after the fact.

<sup>332</sup> Huxley, G. L. (1981, pp.331-32), Lardinois, A. (1995, pp. 22-24; 1997, pp.213-17)

explaining how the speaker expects it to pan out in a form that was both persuasive and memorable.

This suggests an awareness in our sources of shared tenets which, importantly, were expressed using a diction that enabled them to be clearly expressed and readily recognised, and which could be used to articulate real rules that could be used not only in poetic performances, but in the more pragmatic discourse of everyday interactions, agreements and disputes in both formal and informal settings.<sup>333</sup> The pragmatism of such language can be seen in the clarity of its expression and its ability to differentiate collections of casuistic rules connected by particles, enabling complex norms with multiple actors or permutations to be formulated, or for collections of intersecting norms to be listed.<sup>334</sup> This pattern is characteristic of the types of laws that we find in Chapter 3, but can already be seen in the extended oaths and *gnōmai* of both Homeric and Hesiodic poetry, suggesting that when the earliest Greek written laws were composed at the end of the 7<sup>th</sup> century, the linguistic and conceptual tools for creating, moulding and applying such sophisticated rules were already being used by speakers and poets.

It is possible that this was just a diction for expressing ‘embedded’ rules that were ‘understood’ by society as a whole and existed alongside norms which did not subsequently become enshrined in written law, rather than a defined set of directives articulated as distinctly authoritative set of regulations. However, such ‘embeddedness’ need not render a society ‘pre-legal’, but instead means that their notion of ‘law’ resides not in monolithic collections of rules, but in their normative beliefs, practices and culture, expressed as individual rules and lived through their customs and institutions. The complex networks of rules that governed the societies that we saw in the previous chapter with their formal procedures for dispute resolution and restitution, and the similarity of the normative concepts and diction enshrined in their concepts of *dikē*, *themis* and *kosmos*, and expressed in their *themistes*,<sup>335</sup> *gnōmai* and oaths to the written laws that will be the subject of the next shows a society whose *themistes* have no less a claim to the name ‘law’ as the *nomoi* of Classical

---

<sup>333</sup> Bachvarova, M. R. (2016, p.212), Walker, J. (1996, pp.257-64) remarks that this is very common in the persuasive discourse of other oral cultures, where the boundaries between the ritualised, formalised and everyday speech-acts are often either blurred or non-existent, with patterned diction used to express wisdom and impress a speaker’s point of view on his audience in a variety of contexts.

<sup>334</sup> See pp.108-24

<sup>335</sup> Roth, C. P. (1976, pp. 334-36), Sealey, R. (1994, pp.91-100), Roebuck, D. (2001, pp.78-88)

Athens or the ‘law codes’ of Gortyn. It is therefore important when inquiring what ‘oral law’ and ‘oral laws’ might have looked like before legal writing, to examine the underlying concepts and speech patterns found in individual normative statements that might be recognisably ‘legal’, what they were used for, and how they might have facilitated the creation of the first written laws in Archaic Greece.

### **Descriptive norms, Customary law and the Vocabulary of Justice**

As we saw in the previous chapter, our sources from 8<sup>th</sup> and early 7<sup>th</sup> century Greece, not only show an awareness of specific types of offence and formalised forums for resolving them, but also had a clear vocabulary for articulating whether actions and responses to them conformed with societal norms. These could be expressed as descriptive norms which praise or condemn actions, often by comparing them with the abstract concepts of *dikē*, *themis* and *kosmos*, and as such were part of the means by which such rules were impressed upon members of the community. The rules expressed in this way vary considerably from simple statements of what is permitted or prohibited to more complex rituals or customs which could be articulated for rhetorical effect, but were generally understood and passed down to successive generations by a combination of oral tradition and the repetition of practices. Penelope makes this association of *dikē* with inherited custom especially clear in her description of the suitors’ excesses as she highlights their diversion from the customs of their ancestors:<sup>336</sup>

μνηστήρων οὐχ ἦδε δίκη τὸ πάροιθε τέτυκτο·  
οἳ τ' ἀγαθὴν τε γυναῖκα καὶ ἀφνειοῖο θύγατρα  
μνηστεύειν ἐθέλωσι καὶ ἀλλήλοις ἐρίσωσιν,  
αὐτοὶ τοί γ' ἀπάγουσι βόας καὶ ἴφια μῆλα,  
κούρης δαῖτα φίλοισι, καὶ ἀγλαὰ δῶρα διδοῦσιν·  
ἀλλ' οὐκ ἀλλότριον βίον νήπιον ἔδουσιν.

*The custom (dikē) of these suitors is not that done in earlier times,  
Those who wish to court a good woman, the daughter of a wealthy man,  
Compete with one another  
They themselves bring fat sheep and cattle,*

---

<sup>336</sup> *Od.*18.275-80

*A feast for the girl's loved ones, and give shining gifts,  
Rather than consume another's livelihood without payment.*

Her comparison of her suitors' *dikē* with older customs, scornfully uses their perversion of accepted norms to mock their behaviour. Her reference to τὸ πάροιθε τέτυκτο (that which was done in earlier times) suggests that the standard of behaviour that she expects is determined by the practices of those that have gone before and thus, that part of the authority that underpins these rules is derived from their repeated, traditional practice over time.

In addition to this sense of customary behaviour, we also find the language of justice is intimately connected with the divine. Zeus is seen as the source of the *themistas* (customs) which govern human interaction and of the authority which empowers human institutions<sup>337</sup> and punishes those who abuse *dikē*, *themis* and *kosmos*, but these concepts also encompass the rules governing fate and the workings of nature. Consequently, the words for 'justice' themselves are used to describe natural behaviours as much as normative ones suggesting that the latter are conceptualised as a component of and analogous with the laws that govern the regular workings of the Archaic Greek cosmos.<sup>338</sup> This suggests that the rules of *dikē* and *themis* are 'divine' in the sense that they are 'laws of nature'<sup>339</sup> and are not restricted to the prescriptive rules enabling humans to cooperate in society, but the association of *dikē* and *themis* with both types of rules reinforces their normative application as a means to express the correctness of an action against an absolute numinous standard and adds to the authority of those rules that could be considered 'legal'.

The connection between the laws of nature and social mores is explicitly made by Hesiod in *Works and Days* 276-80 which describes how '*dikē*' was given as an attribute (*nomos*) to mankind in contrast to those bestowed on other animals, showing how fundamental justice was in creating stable communities that could thrive in opposition to the violence of the rest of the natural world:

τόνδε γὰρ ἀνθρώποισι νόμον διέταξε Κρονίων,  
ἰχθύσι μὲν καὶ θηρσὶ καὶ οἰωνοῖς πετεηνοῖς

---

<sup>337</sup> Cf. *Il.*1.238-9 and 9.98-9, Allan, W. (2006, p.9)

<sup>338</sup> E.g. Sound sleep is described as 'the right (*dikē*) of old men' *Od.*24.255 and the physical act of love is described as 'natural (*themis*) for people – men and women.' *Il.*9.134 cf. 276 = 19.177.

<sup>339</sup> Long, A. A. (2005, pp.412-17), Sealey, R. (1994, pp.138-41), Ostwald, M. (1986, p.87), Palmer, L. R. (1950, pp.160-61)

ἔσθειν ἀλλήλους, ἐπεὶ οὐ δίκη ἐστὶ μετ' αὐτοῖς·  
ἀνθρώποισι δ' ἔδωκε δίκην, ἣ πολλὸν ἀρίστη  
γίνεται·

*For Zeus son of Kronos set out one rule (nomos) for mankind,  
But another for fish and beasts, and winged birds:  
That they should eat one another, since there is no justice (dikē) among them  
But to mankind he bestowed justice (dikē), by far the best quality  
there is.*

In our 8<sup>th</sup> and 7<sup>th</sup> century sources, the word ‘*nomos*’ does not appear to have acquired the meaning of ‘law’; rather it has the sense of ‘what is allotted’, derived as it is from the verb *nemein* – ‘to allocate’. However, Hesiod’s connection between *nomos* and *dikē* here is significant as it suggests that human customs, morals and institutions are not only instrumental in enabling peaceful communities to exist, but, as in Homer, that they are also part of a larger cosmic order.<sup>340</sup> This association is also evident in the development of the notion of *nomos* in the Classical period, as it became more explicitly linked with justice and law in our later sources, suggesting that this too evolved from a sense that the community’s rules were divinely sanctioned and part of the lot of humankind.<sup>341</sup>

Thus, despite their etymologically distinct roots, *dikē*, *themis* and *kosmos* and their cognates are used by Homer and Hesiod more or less interchangeably to embody the same practical and judicial necessities of living in a successful cooperative society, including both those norms and practices that would eventually come to be reflected in written law and the

---

<sup>340</sup> Ostwald, M. (1986, p.87), Long, A. A. (2005, pp.414-16) cf. The *nomos* of agriculture in *Op.*388-92 or *Th.* 901-2 where Hesiod places the *Horai* as the sisters of *Dikē* in his divine genealogy. Just as the seasons are governed by a regular predictable pattern, so the laws governing the behaviour of mankind were part of a heavenly grand plan.

<sup>341</sup> Gagarin, M. (2008, p.91), Roebuck, D. (2001, p.27), Palmer, L. R. (1950, p.164). Ostwald (1986, p.88-89) has convincingly argued that this development in Athenian normative terminology was officially adopted in the time of Cleisthenes at the very end of the 6<sup>th</sup> century. Certainly it must have become the standard term for official state statutes after the time of Solon (mid 6<sup>th</sup> century) when the term generally used appears to have been *thesmos* or *thesmia* cf. Sol. fr. 36.18-20, *Ath. Pol.*4.1, 7.1, *IG I<sup>3</sup>* 104 l.20 Gagarin, M. (2008, p.44), Ober, J. (2005, p.402), Thomas, R. (1996, p.19), Stroud, R. S. (1968, p.20). Later Greek sources seem to have continued to associate *thesmoi* with older rules and *nomoi* with laws that were currently in force cf. the decree of Teisamenos (*Andok.* 1.83) which distinguishes the *thesmoi* of Drakon from the *nomoi* of Solon, Sealey, R. (1994, pp.116-17) and *Ath. Pol.* 16.10, Gagarin, M. (2008, pp.115-16).

traditional divinely sanctioned order of the cosmos. Likewise, concepts associated with the penalties for failure to abide by these standards (*tisis*, *poinē*, *nemesis* and their cognates), can equally refer to the wrath of the gods, compensation or punishment, showing both the practical manifestations of these concepts and the divine powers that underpinned them. This suggests that, to Greeks of the 8<sup>th</sup> and 7<sup>th</sup> centuries, these various components of ‘justice’ were complementary, providing standards by which to praise or condemn behaviour and enabling poets and their audiences to envisage the divine and practical forces that compel us to behave in accordance with these concepts, several of which contributed to the ways that rules were enforced and formalised dispute resolutions were conducted.

The alignment of practical, human dispute resolutions with this sense of divine justice was an important component in the way that ‘legal’ norms were articulated and must have lent considerable authority to both the community’s rules and the institutions meant to administer them. We can see this in the use of phrases like '*hē dikē esti*' or '*ou themis esti*' which could be used to describe responses to natural urges,<sup>342</sup> but there were also rules governing the different roles of individuals involved in normative procedures, such as the right of nobles to speak and be heard in the *agora* or *boulē* (*Il.*9.33, 23.581, 24.652), or their responsibilities such as the expectation that kings are generous and kind (*Od.*4.691). The same emphasis on justice comprised of both substantive and procedural rules reflecting the divine order can be seen in the use of the expression *kata kosmon* or of *kosmō* in the dative,<sup>343</sup> which can be used to describe correct normative behaviour in assembly (*Il.*2.214, *Od.*3.137-38, 8.178-79), the proper carrying out of sacrifices (*Il.*24.621-24), undignified behaviour (*Il.*8.12, *Od.*20.178-82), or the threat implicit in Apollo’s statement that he and Hermes might resolve their dispute *ou kata kosmon* (*HH* 4.255). Such norms indicate an understood network of customary behaviours that drew on and encompassed etiquette, morals and religious norms, but also included rules which are either legal in nature or pertained specifically to the working of formalised normative institutions.

This terminology was also a feature of the *agora* itself, its rituals and the formalised, adjudicatory decisions that arose from it. The *agora* and *skēptron* are explicitly associated

---

<sup>342</sup> See Appendix 1 Thus we see invocations of substantive rules saying that one must be kind to strangers (*Il.*11.779), repay good hospitality in kind (*Od.*24.286), and pray to the gods (*Od.*3.45, *Op.*137)

<sup>343</sup> See Appendix 2 These basically refer to good order or control, such as when they are applied to good horsemanship (*Il.*11.48, 12.85), or the weapons of a disciplined army (*Il.*10.472), but may also be applied to fate (*Il.*5.759, 17.205) or the divinely-inspired truth of singers (*Od.*8.489, *HH* 4.433, 478-79).



with *themis* at *Il.*11.807 and Menelaus takes the sceptre and declares that it is *themis* when he says he will judge (*dikasō*) Antilochus by means of a formalised oath-challenge at *Il.*23.566-85, using all the trappings of judicial authority to lend weight to his proposal.<sup>344</sup> Similarly, the decisions that arose from adjudications and the pronouncements of leaders are referred to as *dikai* or *themistes*,<sup>345</sup> while the verb forms *dikazein* (to decide<sup>346</sup> or argue<sup>347</sup>) and *themisteuein* (to pronounce or pass judgement<sup>348</sup>) also suggest a connection between these concepts and the formal structures that allowed early Archaic communities to resolve *neikea* and direct behaviour. Unlike the customs invoked by Penelope, or the divine support for rules regarding the protection of kings, suppliants, families and oaths, the pronouncements made by community leaders in the *agora*, much like later written laws, have an identifiable human source and as such represent the kinds of norms articulated in the *agora* that would have had the force of law, being practical, enforceable and sanctioned by the community and its institutions.

That said, the decisions of leaders could still be open to evaluation. The adjectives *skoliai* and *itheiai* can be used to qualify the *dikai* and *themistes* of people in the *agora* in general and community leaders in particular. Good *dikai* are *itheiai*, with ‘straight judgements’ coming from Zeus,<sup>349</sup> and thus conforming to the divinely-rooted shared ideal of *dikē*. In practice, this means that people trust in those whose decisions most closely reflect and most cleverly employ the norms of the community at a particular moment, and who are able to wield authority most effectively to keep the peace:

οἱ δὲ νῦ λαοὶ  
 πάντες ἐς αὐτὸν ὀρῶσι διακρίνοντα θέμιστας  
 ἰθειῆσι δίκησιν· ὁ δ' ἀσφαλῆως ἀγορεύων  
 αἰψὰ τι καὶ μέγα νεῖκος ἐπισταμένως κατέπαυσε·

<sup>344</sup> MacDowell, D. M. (1978, pp.17-18), Gagarin, M. (1986, pp.88-89), Sealey, R. (1994, pp.93-102), Thür, G. (1996, pp.64-66), Roebuck, D. (2001, pp.65-66, 86-87)

<sup>345</sup> Roebuck, D. (2001, pp.80-82)

<sup>346</sup> Cf. Use of the verb *dikazein* to evaluate competing claims *Od.*11.545-47, *Il.*23.574 & 579, *Od.*12.440, *Op.*39 Humphreys, S. C. (1988, pp.466-67) Gagarin, M. (2005, pp.87-89; 1986, pp.28-30; 1981, pp.147-8; 2000, pp.569-70)

<sup>347</sup> Cf. *Il.*18.506 – both litigants *edikazon* suggesting that it in this context it refers to the speeches they made. cf. Knudsen, R. A. (2014, p.12), Roebuck, D. (2001, p.72)

<sup>348</sup> *Od.*9.114 (Cyclopes), 11.568-71 (Minos), the verb is also used of Apollo’s prophecy through the Pythia in *HH*3.253 = 293

<sup>349</sup> *Op.*36

τοὔνεκα γὰρ βασιλῆες ἐχέφρονες, οὔνεκα λαοῖς  
βλαπτομένοις ἀγορῆφι μετάτροπα ἔργα τελεῦσι  
ῥῆϊδίως, μαλακοῖσι παραιφάμενοι ἐπέεσσιν·

*And then the people -  
all of them - look to him who determines the verdicts  
with straight judgements; and he, arguing firmly  
swiftly and intelligently puts an end even to a great dispute  
It is for this that sensible kings - for those people  
Who err in the agora - set right the affairs of the people  
Easily, talking them over with gentle words.<sup>350</sup>*

Here, the decisions the ideal *basileus* comes to are *themistes* and they are determined by *itheĩsin dikēsin* – a phrase which serves both to express the shared understanding of justice which the leader is using to adjudicate and also to evaluate the quality of his judgements. What this means in practice is set out in what follows: putting an end to quarrels when someone commits an offence in the public space of the *agora* using his cunning words to convince the litigants and presumably win the support of the assembled *laoi* by speaking in a way that resonates with their audiences.

Conversely, *dikai* and *themistes* which do not conform with the abstract concepts of *dikē* or *themis*, can be open to condemnation as *skoliai* (crooked). Thus we see that Zeus can be enraged by:

οἱ βίη εἰν ἀγορῆ σκολιάς κρίνωσι θέμιστας,  
ἐκ δὲ δίκην ἐλάσωσι θεῶν ὅπιν οὐκ ἀλέγοντες·

*Those who in violent assembly pass crooked decrees,  
and drive justice out, not caring about the vengeance of the gods,<sup>351</sup>*

Here we see how the interplay between *dikē* as the abstract embodiment of ‘justice’ and the individual *themistes* of humans in the *agora* can be used to show a breakdown in proper

---

<sup>350</sup> *Th.*84-90

<sup>351</sup> *Il.*16.387-88 cf. *Op.*250-51

functioning of normative institutions, with *Dikē* driven out as they pass crooked *themistes* in an *agora* described as *biē* (violent). Similarly, Hesiod’s personification of *Dikē*<sup>352</sup> is described as complaining to her father Zeus ‘whenever anyone harms her by making accusations crookedly (*skoliōs*)’<sup>353</sup> and that the people (*dēmos*) will suffer when their rulers ‘brush just decisions (*dikas*) aside, speaking crookedly (*skoliōs*)’.<sup>354</sup> Hesiod’s allegory concludes with a command that the *basileis* mend their ways, again connecting the abstraction of justice with the real outcomes of the *agora* and the decisions of community leaders:

ταῦτα φυλασσόμενοι, βασιλῆς, ἰθύνετε μύθους,  
 δωροφάγοι, σκολιέων δὲ δικέων ἐπὶ πάγχυ λάθεσθε.

*Take care of these things, rulers, make straight your words,  
 Greedy for gifts though you are, and utterly forget your crooked decisions.*

In both these examples, *Dikē* is cast as the victim and is not herself capable of being ‘*skoliē*’, nor is the *agora* or the social standing of the *basileis* up for debate, rather the individual decisions of the human actors are the *dikai* and *themistes* that are being evaluated in this way and this seems to have been connected with their subversion of both the will of Zeus and the proper norms of the *agora*.<sup>355</sup>

This combination of rules as things which are set down by the gods or ancestral custom with the human pronouncements and procedures of the *agora* can also be seen in the subsequent development of terms connected with written law. Our earliest references to a term for written rules describe them as *thesmoi*,<sup>356</sup> while later texts show an evolution of the

---

<sup>352</sup> *Op.*256-64

<sup>353</sup> *Op.*258

<sup>354</sup> *Op.*261-62

<sup>355</sup> Ober, J. (2005, pp.398-400), Cf. Also *Op.*193-4 and 219-21 which make particular mention of the swearing of false oaths in connection with *skoliai dikai* – a key component in the proper workings of archaic Greek judicial systems (*See pp.*85-86, 207-10).

<sup>356</sup> Cf. Solon fr. 36.18, *ML* 13 and 20 MacDowell, D. M. (1978, pp.44-45), Thomas, R. (2005, p.59), Gagarin, M. (2008, p.91) In Homer, the term *thesmos* is used to refer to the site of Odysseus and Penelope’s bed suggesting a sense that it is ‘allotted’ (*Od.*23.296). The term is more explicitly connected with rules in the Homeric Hymn to Ares (*HH* 8.16) where it is used to describe the ‘the laws of peacetime’ which the author gives thanks that he lives under as he prays not to let his urges disturb them. As we have seen, the related term *themistes* can mean decisions, pronouncements or customary norms.

term *nomos* from ‘that which is allotted’ to meaning ‘norm’ in general or ‘law’ in particular.<sup>357</sup> This suggests that these words and their link between justice and accepted traditions of rules, institutions and normative behaviour continued even as written legislation, with its clear sense of human agency, came to be a part of the cultural fabric of the *poleis*. As we shall see, written laws inscribed and displayed at the behest of political bodies, officials or lawgivers of legend could be defined in opposition to unwritten rules that arose from the gods, customs and normal behaviour, but also became very much part of the same culture of rules set down in order that *poleis* might function in accordance with *dikē*. While the conflicts between them might be exposed in philosophy and tragedy, they were almost never set against one another in practice,<sup>358</sup> further suggesting that, while laws were acknowledged to have human sources and were focused on the practical, enforceable rules of the *polis*, they were held in similar reverence to the abstract notion of *dikē* as part of the city’s normative culture.<sup>359</sup>

### Expressing Consequences

In addition to this vocabulary for evoking accepted norms and the laws of the gods to declare what is morally right or wrong or to describe the decrees of normative institutions, the ability to express the consequences of actions could also be a powerful way of ensuring that rules were followed and accepted. These could channel behaviour by making the results of choices clear and thus directing or coercing addressees, especially when giving advice, or setting out the terms of a challenge or agreement, and, just like the concepts of *dikē* and *themis*, could draw their authority by evoking the expected responses of either the gods,

---

<sup>357</sup> Ostwald, M. (1986, pp.87-89)

<sup>358</sup> See pp.182-85, 209-11, 238-49 Wohl, V. (2010, pp.26-37), Ober, J. (2005, pp.394-411), Thomas, R. (2005, p.52-54; 1996, pp.11, 16; 1992, pp.68-73,130), Harris, E. M. (2004, pp.21-34), Todd, S. C. (1996, pp.120-22), Ostwald, M. (1986, pp.84-136)

<sup>359</sup> This reverence for the established laws of the *polis* can also be seen in the concerns that Greeks had for preserving them. Not only did laws themselves sometimes contain curses or injunctions against overturning them (Cf. Appendix 3 §3, §4 and §9 *Nomima* I.100, 104-5 see pp.232-35), but later Greeks told legends of the measures lawgivers took to safeguard their legislation for the future (cf. Hdt. 1.29, Plu. *Sol.*25, *Lyc.*29, *Ath. Pol.* 7.2, Dem.24.139-43). At Athens, the 5<sup>th</sup> century introduction of the *graphē paranomōn* and the legal conservatism ushered in by the reorganisation of the laws after the upheavals around the turn of the 4<sup>th</sup> century BCE show a real desire to preserve the city’s laws, both as fundamental expressions of their values and as a touchstone of their cultural identity. Kapparis, K. (2019, pp.36-40), Harris, E. M. (2004, pp.31-34), Humphreys, S. C. (1988, p.476), MacDowell, D. M. (1978, pp.50-52) Todd, S. (1996, pp.120-30) cf. also the case of Leptines in Dem.20 (Canevaro, M. 2016)

individuals or society as a whole. Such expressions are used in Homeric and Hesiodic poetry to give advice to addressees in the form of *gnōmai* or set the terms of agreements or challenges when formulated as oaths.<sup>360</sup> They could even be arranged in sequences to address complex situations, like a scenario with a range of different possible outcomes,<sup>361</sup> the roles of different actors in response to an action<sup>362</sup> or different overlapping rules that governed an individual's behaviour.<sup>363</sup>

This use of casuistic syntax in texts from the 8<sup>th</sup> and 7<sup>th</sup> centuries is significant as it is similar both in form and function to the types of clauses used in later written laws,<sup>364</sup> following a similar pattern of general conditions with apodoses detailing consequences, and demonstrating the capacity for rules to be collected and stratified, much as legal texts lay out hypothetical issues to be implemented repeatedly in multiple subsequent cases. While we have no evidence to confirm that these formulations were in fact used as a template for oral laws composed in verse, as Roth surmises,<sup>365</sup> their similarity to later legal language is striking, suggesting that their diction was highly influential to those composing legal texts, and they appear to have been used in arguments to modify individuals' behaviour by expressing in general terms what they should expect from following a given course and so can be regarded as 'legal' in nature.

### *Casuistic Gnōmai*

As we have seen, normative *gnōmai* could simply express substantive rules by stating whether a particular action conformed with *dikē*, *themis* or *kosmos*. However, we also see that *gnōmai* could express the appropriateness of an action by describing its consequences which could take the form of divine retribution, the natural results of a particular behaviour or what one might reasonably expect from other members of society. It is therefore common to see speakers and didactic poets using *gnōmai* formed from casuistic conditionals or relative clauses supported by indefinites accompanied by apodoses expressing the outcomes, much like those

---

<sup>360</sup> Sealey, R. (1994, pp.43-50, 91-100), Roth, C. P. (1976, pp.334-36), Knudsen, R. A. (2014, pp.45-76; 105-124) West, M. L. (1978, p.1).

<sup>361</sup> Cf. *Il.*3.276-91 *see pp.*120-24

<sup>362</sup> Cf. *Il.*9.632-6 *see pp.*113-14

<sup>363</sup> Cf. *Op.*321-34 *see pp.*114-16

<sup>364</sup> Harris, E. M. (2004, pp.21-22) has used this feature of Athenian law to show their correspondence with Pospíšil's (1971, pp. 44-95) four criteria of authority, consistency, *obligatio* and sanctions. The same, it will be argued, can be found in the more complex casuistic *gnōmai* and oaths of Homeric and Hesiodic poetry.

<sup>365</sup> Roth, C. P. (1976, pp.334-36)

we find in later written laws.<sup>366</sup> In a number of *gnōmai* we also see the indefinite or relative pronouns supplemented with<sup>367</sup> or substituted for the word ‘*anēr*’.<sup>368</sup> This is occasionally to differentiate ordinary men from more specific designations like ‘*basileus*’ (*Il*.1.80-83) or ‘*gynē*’ (*Op*.702-5); a pattern we also find in collections of Greek written laws where specific types of people are delineated,<sup>369</sup> but its general use to introduce casuistic phrases alongside conditionals and indefinites is significant, as phrases like ‘a man who...’ or ‘if a man...’ is also typical of Near Eastern normative texts,<sup>370</sup> suggesting that such features of the well-established legal traditions of their neighbours were already permeating into Greek normative language before their development of written law.

Just as the notions of *dikē*, *themis* and *kosmos* can be used to express both the notions of ‘justice’ and ‘the natural order ordained by Zeus’, so casuistic *gnōmai* can express not only expectations, praise and condemnation of behaviour:<sup>371</sup>

τοῦ γάρ τε ξεῖνος μιμνήσκειται ἡματα πάντα  
ἀνδρὸς ξεινοδόκου, ὅς κεν φιλότητα παράσχη.

*For a guest remembers all his days  
that man, the host who offered friendship.  
Od.15.54-55*

μετὰ γάρ τε καὶ ἄλγεσι τέρπεται ἀνὴρ,  
ὅς τις δὴ μάλα πολλὰ πάθη καὶ πόλλ' ἐπαληθῆ.

*For a man can delight even in sorrows,  
whoever's suffered much and wandered far.  
Od.15.400-401*

---

<sup>366</sup> See pp. 149-80

<sup>367</sup> cf. *Od*. 10.383-85

<sup>368</sup> cf. *Il*.1.80-83, 8.143-4, 17.98-99, 19.162-70, 19.182-3, *Od*.4.649-51, 8.169-75, 8.209-11, 8.546-47, *Op*.265, 303-6, 411-3, 447, 455-56, 498-99, 702-5, 713-4, 731-32

<sup>369</sup> See pp. 154-59

<sup>370</sup> Cf. Hammurabi's use of the formula *šum-ma a-wi-lum* or the Hittite ‘if a man...’ and ‘if a vine...’ texts (Haase, R. 2003, pp. 620-21) which use these phrases to express general conditions in which given consequences will be performed. See pp. 124-37

<sup>371</sup> Cf. *Od*.8.585-6 Comrades become as close as brothers; *Od*.15.54-55 a *xenos* will remember a good turn

ἐπεὶ οὐ μὲν τι κασιγνήτιο χερείων  
γίνεται, ὅς κεν ἑταῖρος ἐὼν πεπνυμένα εἶδη.

*Since he becomes nothing less than a brother,  
Whichever comrade knows and understands you.  
Od.8.585-86*

ἄφρων δὴ κεῖνός γε καὶ οὐτιδανὸς πέλει ἀνὴρ,  
ὅς τις ξεινοδόκῳ ἔριδα προφέρηται ἀέθλων  
δήμῳ ἐν ἄλλοδαπῷ: ἔο δ' αὐτοῦ πάντα κολούει.

*Senseless and of no account is the man  
who offers his host rivalry in games  
in a foreign land and cuts off all that's his.  
Od.8.209-11*

But also self-evident or natural outcomes, such as the fact that hunger saps one's strength and stamina in battle<sup>372</sup> or the belief that deceit begets further lies:<sup>373</sup>

ὄποϊόν κ' εἴπησθα ἔπος, τοῖόν κ' ἐπακούσῃς.  
*The sort of thing you say is the thing that will be said to you.  
Il.20.250*

And the responses of the gods to certain behaviours, suggesting that these were expectations of how one should and should not behave, and invoking divine consequences in support or condemnation of particular actions.<sup>374</sup>

ὅς κε θεοῖς ἐπιπέιθηται μάλα τ' ἔκλυον αὐτοῦ.

---

<sup>372</sup> *Il.19.162-70*

<sup>373</sup> Cf. *Il.23.318-25* Nestor explains to Antilochus that clever driving will allow him to punch above his weight in the chariot race even if his steeds are not the fastest; being asked a favour by a friend in need *Od.4.649-51*; how cruel and virtuous people are remembered after their deaths *Od.19.325-34*.

<sup>374</sup> Cf. *HH 2.481-3, 487-50*

*Whoever obeys the gods, they listen to him also.*

*Il.1.218*

The syntactical organisation of these rules through the Greek penchant for connecting particles and the tendency to fit these statements into metrical lines with introductory formulas at the starts of lines can be used to demonstrate a variety of different permutations of rules and expectations. In Homer, this is often used to rhetorical effect enabling a speaker to demonstrate a number of different consequences for a single action or to contrast the outcomes of two different behaviours. In *Iliad* 9, the embassy to Achilles uses several methods including enthymematic arguments based on *gnōmai* and *paradeigmata* to persuade him to abandon his current course and accept Agamemnon's offer of compensation.<sup>375</sup> Phoenix's *enthymēma* applying the paradigmatic tale of the *Litai* to the specific situation of Achilles' actions concludes with this summarising *gnōmē*:<sup>376</sup>

ὄς μὲν τ' αἰδέσεται κόουρας Διὸς ἄσσοις ἰούσας,  
τὸν δὲ μέγ' ὄνησαν καὶ τ' ἔκλυον εὐξαμένοιο·  
ὄς δέ κ' ἀνήνηται καὶ τε στερεῶς ἀποείπη,  
λίσσονται δ' ἄρα ταί γε Δία Κρονίωνα κιοῦσαι  
τῷ ἄτην ἄμ' ἔπεσθαι, ἵνα βλαφθεὶς ἀποτίση.

*whoever respects these daughters of Zeus as they come closer,  
to him they give great blessings, and hear his prayers;  
but whoever shall deny them, and stubbornly dismiss them  
they beg, going to Zeus, son of Kronos,  
that Ruin may pursue this man, so that hurt, he may be punished*

The syntax and structure of this final statement summarises the story in terms that make evident the application of the allegory to the normative world of the speaker and his audience. The *gnōmē*'s binary form with two indefinites delineated by the particles *men* and *de*, shows the starkly opposing outcomes of respecting and ignoring the imprecations personified in the allegory. Contrasting the consequences of courses of action with a binary casuistic *gnōmē* is a

---

<sup>375</sup> Knudsen, R. A. (2014, pp.60-64)

<sup>376</sup> *Il.9.508-12*



common strategy in Homeric rhetoric<sup>377</sup> and Hesiod's didactic<sup>378</sup> allowing the channelling of behaviour by appearing to present the listener with a choice, but demonstrating that one course of action or behaviour is clearly favoured.

If setting protases against each other allows one to contrast the outcomes of different behaviours, then setting out multiple apodoses enables the speaker to show the consequences of a given action for more than one individual. The embassy concludes with Ajax abandoning the effort, but not without making it clear that Achilles' behaviour is not in keeping with accepted customs, taking pains to point out that a *poinë* is the most acceptable means for resolving a dispute to the benefit of all parties.<sup>379</sup>

καὶ μὲν τίς τε κασιγνήτοιο φόνοιο  
ποινήν ἢ οὗ παιδὸς ἐδέξατο τεθνηῶτος·  
καὶ ῥ' ὁ μὲν ἐν δήμῳ μένει αὐτοῦ πόλλ' ἀποτίσας,  
τοῦ δέ τ' ἐρητύεται κραδίη καὶ θυμὸς ἀγήνωρ  
ποινήν δεξαμένῳ·

*And yet from his brother's murderer  
One receives the blood price, or even for a slain child,  
And, when he has repaid a great deal, the killer remains in the community,  
and the grieving man's heart and courageous spirit are held in check  
when he has taken recompense.*<sup>380</sup>

Here, the statement sets out a procedure describing what is expected of someone who has lost a relative and the positive results of following this course for both perpetrator and victim. The basic principle - that relatives of murder victims normally accept compensation - is laid out clearly in the first two lines: the generalising phrase καὶ μὲν τίς with its indefinite pronoun indicating that this principle could apply to any plaintiff in this situation.

In this example we also see syntax for delineating the situations in which a *poinë* might be sought and the consequences for different actors. The range of close kin for whose murder

---

<sup>377</sup> Cf. *Il.* 13.279-86, 16.440-57, 19.162-70, 24.527-33, *Od.* 19.329-34

<sup>378</sup> Cf. *Op.* 225-47, 276-85, 293-97, 347-8, 355-60, 602-12 (this last contrasts those who do not marry with those who do, but is subject to the qualification that a bad wife can be severely to one's detriment)

<sup>379</sup> Gagarin, M. (1986 p.104)

<sup>380</sup> *Il.* 9.632-36

a man might receive compensation (κασιγνήτοιο φόνοιο... ἢ οὗ παιδός... τεθνηῶτος) is primarily to add to the emotive effect of the *enthymēma*, but the phraseology in these two lines shows how a general rule can be formulated to apply to all members of a community and denote the selection of circumstances to which they pertain. The subsequent lines clearly mark out the expected results of this action using linguistic markers to distinguish the two parties – the perpetrator (καί ῥ' ὁ μὲν) is allowed to continue living peacefully in the community and the victim's relative (τοῦ δέ τ') is placated. The repeated expression for receiving compensation (ποινήν... ἐδέξατο/ ποιήν δεξαμένῳ) thematically unites the two parts and further underlines the connection between cause and effect. The same use of expressions of extent, methods of distinguishing different actors and the repetition of thematic phrases is found in collections of written laws, where, just as in this *gnōmē*, they enable inscriptions to set limits, account for differences of status and maintain a sense of unity and consistency.<sup>381</sup>

The syntax of these rules not only facilitates the expression of alternative consequences depending on the course followed and the point of view one adopts, but also enables the accumulation of normative statements in order to create frameworks of rules within which one must operate. Hesiod's didactic passages have a huge number of gnomic expressions<sup>382</sup> and he frequently lists these to present a convincing weight of evidence.

χρήματα δ' οὐχ ἀρπακτά, θεόσδοτα πολλὸν ἀμείνω·  
εἰ γάρ τις καὶ χερσὶ βίη μέγαν ὄλβον ἔληται,  
ἢ ὃ γ' ἀπὸ γλώσσης ληίσσεται, οἷά τε πολλὰ  
γίνεται, εὗτ' ἂν δὴ κέρδος νόον ἐξαπατήσῃ  
ἀνθρώπων, αἰδῶ δέ τ' ἀναιδείη κατοπάσῃ,  
ῥεῖα δέ μιν μαυροῦσι θεοί, μινύθουσι δὲ οἶκον  
ἀνέρι τῷ, παῦρον δέ τ' ἐπὶ χρόνον ὄλβος ὀπηδεῖ.  
ἴσον δ' ὅς θ' ἰκέτην ὅς τε ξεῖνον κακὸν ἔρξει,  
ὅς τε κασιγνήτοιο ἐοῦ ἀνὰ δέμνια βαίνη  
κρυπταδῆς εὐνής ἀλόχου, παρακαίρια ῥέζων,  
ὅς τέ τευ ἀφραδῆς ἀλιταίνητ' ὀρφανὰ τέκνα,

<sup>381</sup> See pp. 150-81

<sup>382</sup> Of the *gnōmai* Lardinois (1995) has identified in archaic Greek poetry, 288 lines are from the *Works and Days* (out of 829, making up 34.7% of the poem) and the 64 from the *Theogony* are concentrated in 6 extended *gnomic* passages (81-103, 416-20, 440-43, 517-19, 594-613, 782-89)

ὄς τε γονῆα γέροντα κακῶ ἐπὶ γήραος οὐδῶ  
νεικεῖη χαλεποῖσι καταπτόμενος ἐπέεσσι·  
τῶ δ' ἦ τοι Ζεὺς αὐτὸς ἀγαίεται, ἐς δὲ τελευτῆν  
ἔργων ἀντ' ἀδίκων χαλεπὴν ἐπέθηκεν ἀμοιβήν.<sup>383</sup>

*Property is not for the taking, far better for it to be god-given  
If one gets hold of immense good fortune by force of his hands or  
steals it by means of his tongue, as often happens  
when personal gain deceives the mind  
of men, and immodesty tramples modesty underfoot.  
Easily the gods blind him and shrink his estate;  
For but a short time good fortune attends such a man.  
Equally bad is the man who does badly by a suppliant or guest  
or one who goes upstairs to the bed of his own brother,  
secretly bedding his wife, committing sinful things,  
or who thoughtlessly sins against orphaned children,  
or who disputes with his aged father on the cruel threshold of old age  
upbraiding him with harsh words.  
With him, indeed Zeus himself is indignant, and at the accomplishment  
Of unjust works he allots a harsh penalty.*

The first conditional expression (321-26) is an extended *gnōmē* giving the general reason why it is better not to seize wealth without earning it: one might be prosperous in the short term, but the gods will ultimately make him pay. The particle γάρ connects this condition with the previous remark thus showing how a general moral statement can be linked to a consequential one to reinforce an argument.<sup>384</sup>

This is followed by a series of further prohibitions in lines 327-34 which will also ultimately incur the wrath of Zeus. These are equated with the previous issue of taking wealth without legitimate claim to it by the phrase ἴσον δ', perhaps to hold these examples of socially

---

<sup>383</sup> *Op.*320-34 a very similar pattern has also been observed by Roth, C. P. (1976, pp.334-36) in Hesiod's rules on behaviour towards one's friends and neighbours *Op.*707-13

<sup>384</sup> A similar phenomenon can be observed in collections of Hebrew 'laws with reasons' (*see pp.*134-37) which are embedded in the narrative of Moses receiving the covenant law books and which occasionally contain both a procedure and a justification based on either logic or the experiences of the Hebrew people.

reprehensible behaviour in comparison with the issue of taking that which is not yours that is the subject of the previous *gnōmē* and which is also the primary thrust of the poem. These rules take the form of five protases, each introduced by the phrase ὅς τε and dependent on both the introductory statement, equating them with the one who is rapacious for wealth, and with the apodosis that Zeus will be angered by anyone doing any of these deeds and will punish them accordingly. The multiplicity of protases therefore creates the sense of an interlocking series of boundaries governing an individual's behaviour, transgression of any one of which will result in moral condemnation and the threat of divine retribution.

This syntax of casuistic expressions therefore enables general rules to be articulated in such a way as to imply that there will be consequences for any individual who follows a given course. This can be achieved in a number of ways, using conditionals, relative or indefinite pronouns, the word 'anēr' or another more specific designation in the protasis and can be followed by an apodosis detailing consequences which may be combinations of divine wrath, natural expectations of human behaviour or procedures based on socially accepted customs. As these tend to be expressed in rhetorical passages, they are often presented in conjunction with arguments that have been made, but the formulas and particles that connect them to *enthymēmai* and *paradeigmata* also allow for sets of rules to be collected. Multiple formulaic protases linked to a single apodosis can be used to prescribe frameworks of rules, while the consequences of a given action on multiple individuals can be shown with more than one apodosis emanating from a single protasis. Thus we see in Homeric and Hesiodic *gnōmai* the capacity to articulate generally understood 'primary rules' as sophisticated 'procedures' that could be applied to a variety of individual situations just like the ones we find in legal inscriptions and which could thus enable the clear expression of individual 'oral laws' and even collections of such rules.

#### *Oaths, curses, prayers and promises*

The same type of normative expression with clear markers separating different actors, actions and consequences can also be found in the language of prayers, curses, oaths, assurances and promises. Imprecations often invoke the mutual fulfilment of obligations, calling on both human and divine addressees to bestow a favour on the suppliant if they recognise the benefits the speaker has conferred or respect established conventions of reciprocity. This type of conditional order is often used by speakers for emotive effect, heavily implying that their side has been fulfilled in order to exert emotional pressure, but is also indicative of a contractual basis for normative language and behaviour. Like *gnōmai*, oaths

could have been used as sources of evidence, but their more specific performance context also allowed them to function as a means to cement agreements or even to formalise and implant new norms as a consequence of community decisions, treaties or responses to events.<sup>385</sup> Oaths used religious beliefs and patterned diction to communicate and reinforce the validity of agreements and the assertions or threats of speakers, and were seen as a crucial means of securing honesty when negotiating the responses of parties to different outcomes of disputes,<sup>386</sup> contests and agreements.<sup>387</sup> They incorporated a variety of elements of formalised diction and structure, and could be accompanied by props, ceremonies and symbolic gestures to underline their importance,<sup>388</sup> and frequently call on witnesses (*martyroi*), whether human<sup>389</sup> or divine,<sup>390</sup> as guarantees that the oath has been sworn and as sources of religious and social pressure to uphold its terms. The capacity to use the same casuistic vocabulary and structural syntax to formulate promissory oaths as that which appears in the *gnōmai* discussed above suggests that they were being used to create new ‘primary rules’ and thus that their form and the divine authority behind them amount to what Hart would describe as ‘secondary rules’,<sup>391</sup> empowering individuals to create new norms which authoritatively set out obligations and sanctions that could be recalled and repeated.<sup>392</sup>

#### *i. Prayers, Imprecations, Curses and Rhetorical Oaths*

Prayers, imprecations and curses made by Homeric speakers typically invoke their adherence to normative reciprocity in order to elicit a desired response from their addressee who is normally in a position of power over the one making the plea.<sup>393</sup> It is common for the protasis to be explicitly conditional on a suppliant’s past behaviour, the recognition that this is in keeping with accepted custom and the respect the listener feels for these norms. However, they are intended to turn a position of weakness into one of strength by implying that the speaker has fulfilled all of the conditions of the protasis and therefore that the apodosis should

---

<sup>385</sup> Sealey, R. (1994, pp.95-100)

<sup>386</sup> Roebuck, D. (2001, p.84), cf. *Op.*193-4 & 256-64

<sup>387</sup> *Il.*3.276-80

<sup>388</sup> Sommerstein, A. H. (2007, p.2), Sealey, R. (1994, pp.97-98). Cf. Achilles’ oath on the Sceptre (*Il.*233-46), Agamemnon’s use of the sceptre when declaring the truce to Idaios (*Il.*7.408-13) or the promise Dolon forces Hector to make (*Il.*10.321-32).

<sup>389</sup> Cf. *Il.*2.302

<sup>390</sup> Cf. *Il.*3.280, *Od.*14.394

<sup>391</sup> Hart, H. L. A. (1961, pp.94-99)

<sup>392</sup> Cf. also Pospíšil’s requirements of authority, consistency, *obligatio* and sanction (1971, pp.44-95)

<sup>393</sup> Rabel, R. J. (1988, p.474)

stand. In the opening book of the *Iliad* Calchas, scorned by Agamemnon, calls on Apollo to punish the Achaeans for the wrongs he has suffered.

Σμινθεῦ εἴ ποτέ τοι χαρίεντ' ἐπὶ νηὸν ἔρεψα,  
ἢ εἰ δὴ ποτέ τοι κατὰ πίονα μηρί' ἔκηα  
ταύρων ἠδ' αἰγῶν, τόδε μοι κρήνην ἐέλδωρ·  
τίσειαν Δαναοὶ ἐμὰ δάκρυα σοῖσι βέλεσσιν.

*Smintheus, if ever I built your temple to please you,  
Or if ever I burned for you rich thigh-bones  
of bulls or goats, then bring to pass this my wish:  
Let the Danaans pay the penalty for my tears with your arrows.*<sup>394</sup>

Here the conditions, both introduced by the phrase εἴ ποτέ τοι,<sup>395</sup> are whether the suppliant has pleased the divinity by following what he sees as correct behaviour, and asking that, if he has, for the god to accomplish his aspiration using the formula τόδε μοι κρήνην ἐέλδωρ.<sup>396</sup> In essence the curse is asking for the fulfilment of a bargain, using similar diction to that found in other imprecations and suggesting the contractual nature of relations between mortals and the gods.

Wagers, rhetorical oaths, oath-challenges or offers to swear could be used both as a mode of proof<sup>397</sup> and as an emotive gesture when predicting how a course of action will turn out.<sup>398</sup> These are the reverse of prayers and invocations as they ask for an outcome if the protasis is not fulfilled, and they often show this by inverting the syntax so that the penalty is stated before the condition.

αὐτίκ' ἔπειτ' ἀπ' ἐμεῖο κάρη τάμοι ἀλλότριος φώς,  
εἰ μὴ ἐγὼ κείνοισι κακὸν πάντεσσι γενοίμην,  
ἐλθὼν ἐς μέγαρον Λαερτιάδεω Ὀδυσῆος.

---

<sup>394</sup> *Il.*1.39-42

<sup>395</sup> The formulaic introduction of addressing a god and then asking 'if ever (εἴ ποτέ) I have...' also occurs in Thetis' supplication of Zeus at *Il.*1.503-10, Nestor's prayer to Zeus at *Il.*15.372 and Eumaeus' curse against Melanthius at *Od.*17.240-46.

<sup>396</sup> Cf. *Il.*1.503-10 and *Od.*17.240-46

<sup>397</sup> Gagarin, M. (2007, p.40), Thür, G. (1996, pp.59-69)

<sup>398</sup> cf. *Il.*1.233-46, *Od.*14.148-73, 16.102-4

*Then may a man from abroad sever my head straightway,  
if I don't become a bane for all those men,  
when I arrive at the hall of Laertes' son Odysseus.*<sup>399</sup>

However, the rhetorical strategy is much the same: in a prayer, curse or supplication, the speaker hopes that the addressee will look favourably on conditions they believe they have fulfilled, whereas evidentiary oaths, oath-challenges<sup>400</sup> and wagers,<sup>401</sup> suggest that the speaker is so certain of a fact that they will stake either some property or harm to themselves if they are found to be wrong.

Gagarin has argued that, although such oath-offers or challenges were probably rarely taken up and were often evasively worded, the offer itself is often secondary to the formal oath-style and the implication that a speaker was prepared to risk incurring the wrath of the gods.<sup>402</sup> The notion of risk as the means of persuading an addressee is supported by the appearance of oaths offered as wagers with more human consequences.

ἀλλ' ἄγε νῦν ῥήτηρην ποιησόμεθ'· αὐτὰρ ὄπισθε  
μάρτυροι ἀμφοτέροισι θεοί, τοὶ Ὀλυμπον ἔχουσιν.  
εἰ μὲν κεν νοστήσῃ ἄναξ τεὸς ἐς τόδε δῶμα,  
ἔσσας με χλαῖνάν τε χιτῶνά τε εἵματα πέμψαι  
Δουλίχιόνδ' ἰέναι, ὅθι μοι φίλον ἔπλετο θυμῷ·  
εἰ δέ κε μὴ ἔλθῃσιν ἄναξ τεὸς ὡς ἀγορεύω,  
δμῶας ἐπισσεύας βαλέειν μεγάλης κατὰ πέτρης,  
ὄφρα καὶ ἄλλος πτωχὸς ἀλεύεται ἠπεροπεύειν.

*But come now, let's make an agreement, then hereafter  
the gods, those who hold Olympus, will be witnesses for both of us.  
If your lord returns to this house,  
you will clothe me in a cloak and tunic, and send me  
to Dulichium, for which love fills my heart.*

---

<sup>399</sup> *Od.*16.102-4

<sup>400</sup> cf. *Il.*23.581-85

<sup>401</sup> cf. *Od.*14.393-400

<sup>402</sup> Gagarin, M. (2007, pp.43-46), Thür, G. (1996, pp.59-62, 66-71)

*But if your lord does not come as I say,  
Then having set your slaves against me, cast me from a great rock,  
so that even another beggar will shrink from deceiving you.*<sup>403</sup>

Odysseus' proposed bet with Eumaeus uses very similar language to evidentiary oaths, calling on the gods to bear witness to it and suggesting different consequences if he is proven to be correct or not with the contrasting casuistic formulaic lines εἰ μὲν κεν... ἄναξ τεὸς... and εἰ δέ κε... ἄναξ τεὸς... The more human dimension to this proposal necessitates a greater deal of precision in the stake Odysseus demands from Eumaeus, the punishment he risks if he is wrong and his reasons for offering these terms. This formulation setting out the terms for alternative outcomes with casuistic conditionals, connecting particles and repeated thematic phrases is not only used in attempts to convince addressees but draws its rhetorical power from its use as the basis of solemn oaths of obligation.

## *ii. Solemn Oaths*

Solemn oaths (*horkia pista*) were used to seal formal accords, issue challenges and halt conflicts<sup>404</sup> using a combination of language, ceremony and religious beliefs to add force and formality to the outcome. This type of oath was effectively a means of creating binding terms for a given situation, combining both the psychological deterrents of divine wrath found in gnomic pronouncements and of casuistic language to set out the expected consequences of particular outcomes. The truce and the terms for the duel in *Iliad* 3<sup>405</sup> is sealed by the performance of religious sacrifices<sup>406</sup> and the issuing of terrible curses against those who break faith.<sup>407</sup> It also has a formalised sequence of diction for expressing its clauses clearly, laying out consequences for each of the permutations envisaged by the swearers.

Ζεῦ πάτερ Ἴδηθεν μεδέων κύδιστε μέγιστε,

---

<sup>403</sup> *Od.*14.393-400

<sup>404</sup> The formula for sealing an important oath in Homer *horkia pista tamein* (to 'cut' solemn oaths) is typically found in contexts where the hoped-for consequences (the conflict ending and combatants returning home) are expressed. (*Il.*2.124 (hypothesised end to the Trojan war), 3.73, 94, 252, 256, 19.191 (of the conclusion of Achilles' conflict with Agamemnon), *Od.*24.483 (end of the conflict between suitors' families and Odysseus)). *For the origin and Near Eastern parallels of this formula see p.125n.*

<sup>405</sup> 245-301 (cf. 7.408-13)

<sup>406</sup> 103-7, 245-75

<sup>407</sup> 320-23



Ἡέλιός θ', ὃς πάντ' ἐφορᾷς καὶ πάντ' ἐπακούεις,  
καὶ ποταμοὶ καὶ γαῖα, καὶ οἱ ὑπένερθε καμόντας  
ἀνθρώπους τίνυσθον ὅτις κ' ἐπίορκον ὁμόσση,  
ὕμεῖς μάρτυροι ἔστε, φυλάσσετε δ' ὄρκια πιστά·  
εἰ μὲν κεν Μενέλαον Ἀλέξανδρος καταπέφνη  
αὐτὸς ἔπειθ' Ἑλένην ἐχέτω καὶ κτήματα πάντα,  
ἡμεῖς δ' ἐν νήεσσι νεώμεθα ποντοπόροισιν·  
εἰ δέ κ' Ἀλέξανδρον κτείνῃ ξανθὸς Μενέλαος,  
Τρῶας ἔπειθ' Ἑλένην καὶ κτήματα πάντ' ἀποδοῦναι,  
τιμὴν δ' Ἀργείοις ἀποτινέμεν ἢν τιν' ἔοικεν,  
ἢ τε καὶ ἐσσομένοισι μετ' ἀνθρώποισι πέληται.  
εἰ δ' ἂν ἐμοὶ τιμὴν Πρίαμος Πριάμοιό τε παῖδες  
τίνειν οὐκ ἐθέλωσιν Ἀλεξάνδροιο πεσόντος,  
αὐτὰρ ἐγὼ καὶ ἔπειτα μαχήσομαι εἵνεκα ποιηῆς  
αὔθι μένων, εἴως κε τέλος πολέμοιο κιχέω.<sup>408</sup>

*Father Zeus, watching over from Ida, most high, most honoured,  
And Helios, you who see all things and hear all things,  
rivers, and Earth, and you who from beneath the earth work to  
punish dead men, whoever among them has sworn to falsehood,  
be witnesses and guard our solemn oaths.*

*If Alexandros should slay Menelaos,  
then let him have Helen and all her possessions for himself,  
and let us set sail in our sea-going ships.*

*But if the golden-haired Menelaos should kill Alexandros,  
then let the Trojans give back Helen and all her possessions,  
and pay also compensation to the Argives, one which is fitting,  
which shall be remembered by those who yet shall be.*

*But if Priam and the sons of Priam refuse  
to pay compensation once Alexandros has fallen,  
then I myself shall fight for recompense,  
remaining here, until I should reach an end of war.*

---

<sup>408</sup> *Il.*3.276-91

The initial invocation to Zeus and Helios uses a *gnōmē* in the form of an inverted indefinite construction to underline the fact that they punish anyone who breaks oaths in general, and commands them to protect and bear witness to this oath in particular.<sup>409</sup> The use of a *gnōmē* about oath-taking highlights the importance of the oath as a means of creating and enforcing the terms of agreements within the normative culture of the Greeks, making clear the aspirations of the swearers and emphasising their expectations for those who fail to keep their promises. Moreover, as we shall see in the next chapter, the direct call to the gods sanctioning the terms of the oath and reinforcing it psychologically in the minds of the audience, is a device either explicitly or implicitly incorporated into the introductions of many written laws.

The oath then continues by setting out the terms of the duel, laying out three different outcomes and their consequences using a formulaic sequence of conditionals introduced by εἰ...κεν/κε/ἄν, and connected to one another by the particles μέν and δέ. The anaphora of εἰ, each time at the start of its line, underlines each variation on the main provision, while the use of particles associates these rules with one another and, implicitly, with the general prohibition against breaking oaths in the initial invocation (which has no such particle). The apodoses of the conditionals are given as third person imperatives (ἐχέτω) or jussive infinitives (ἀποδοῦναι, ἀποτινέμεν) for the Trojans, a feature typical of the apodoses of written laws,<sup>410</sup> while the Argives' actions require the first person jussive subjunctive (νεώμεθα, μαχήσομαι) since it is Agamemnon who is setting these terms for his own people.

Moreover, the individual provisions are internally formulaic in that they use similar terms to connect them with one another and to clarify the differences between them. The first and second conditions, setting out what should happen if Alexandros or Menelaus should win repeat the names of the two men with the loser first and the victor second in the protasis and then explain what should be done with Helen and all her goods by the Trojans using the phrase ἔπειθ' Ἑλένην καὶ κτήματα πάντα, followed by the expected response of the Argives. The second condition also demands that the Trojans pay compensation (τιμὴν) using the verb ἀποτινέμεν, while the third repeats the words τιμὴν and τίνειν as he says that if they fail to comply, then the speaker (Agamemnon) will continue the war staying there for the sake of

---

<sup>409</sup> A similar prohibition against false-swearing can be found at *Th.*231-32. A rather more complex example of a *gnōmē* on the consequences of false-swearing can be seen in *Th.*793-806 which is introduced by ὅς κεν and details a lengthy procedure for what happens to a god when they break an oath sworn on the river Styx.

<sup>410</sup> See *pp.*150-62

restitution (εἵνεκα ποινῆς). Furthermore, Agamemnon uses clear and all-encompassing phrases within his provisions to cover both what is at stake – Helen and all her possessions (Ἑλένην καὶ κτήματα πάντα) – and the individuals who could break the truce – Priam and all his sons (Πρίαμος Πριάμοιό τε παῖδες).

The terms of the oath and their consequences are, with the exception of the general prohibition against false swearing, all actionable human ones, like Odysseus' wager, demonstrating the way that oaths could use casuistic language to set out real agreements, rules and procedures. In the *Iliad* we generally find this type of agreement with a series of conditional responses used to pre-agree or pre-state the actions to be followed if an outcome is uncertain or reliant on a party that is not the swearer, so we find it in the terms of contests and duels,<sup>411</sup> promises<sup>412</sup> and threats<sup>413</sup> to set expectations of how the swearer will act in a given situation.

Its terms also seem to have been easily repeated and invoked, as Agamemnon does after Paris is spirited away by Aphrodite<sup>414</sup> and, after it was broken, it is referred to a number of times.<sup>415</sup> While this may have been intended as a reminder to the audience of this moment that foreshadows the sufferings in the rest of the narrative, it also suggests that the ceremonial significance, formulaic language and divine sanctions of the oath were supposed to stick with those watching. Likewise, the expectation that the Trojan compensation for Menelaus should be seen as fitting in the present and for 'those who shall come after' (ἐσσομένοισι μετ' ἀνθρώποισι πέληται)<sup>416</sup> implies that this agreement was intended to resonate down the ages with future communities. This suggests that witnessed oaths could have been used to set out the terms of a truce or other accords and recalled as proof that the actions of parties contravened or were in accordance with what had been agreed and that especially momentous ones could even set a kind of precedent for future agreements.

---

<sup>411</sup> *Il.*3.276-91, 7.76-86

<sup>412</sup> *Il.*1.85-91, 5.212-16, 9.132-61, 19.107-11, *Od.*2.373-76 (cf.4.744-49), 5.177-79, 10.343-45, 12.298-307, 14.393-400, 16.102-11

<sup>413</sup> *Il.*2.257-64

<sup>414</sup> *Il.*3.456-61 Once Paris has been spirited away by Aphrodite, Agamemnon declares Menelaus the winner and calls on the Trojans to honour this agreement using exactly these words to the agreement of the Achaeans

<sup>415</sup> 4.155-59, 235-9, 268-71, 7.69-72, 351-2. Similarly, at *Il.*23.141-51, Achilles recalls an oath his father Peleus swore to the river-god Spercheus that he would grow his hair and offer it to the god if he came back from Troy alive. Acknowledging that, with Patroclus dead, the oath will not be fulfilled he gives his hair to his dead friend instead.

<sup>416</sup> This clause is invoked by Agamemnon at 460, but it is also a formula typically used for describing the immortalisation of an individual: in song *Il.*6.358, for one's deeds *Il.*22.305, by a grave marker *Od.*11.76 or for acting shamefully *Il.*2.119, *Od.* 18.215-25, 21.255, 24.433.

The use of casuistic indefinites with asyndeton to designate overarching provisions and sequences of conditional sub-clauses linked by connecting particles is also typical of later legal language, as is the internally formulaic repetition or rearrangement of key phrases to emphasise their similar topics and their different permutations.<sup>417</sup> Likewise, the use of jussive infinitives and third person imperatives in apodoses to set out consequences, curses and procedures is also evident in the efforts to write legislation by later Greeks that is authoritative and unambiguous.<sup>418</sup> These features of Homeric oaths show that there was a language for combinations of scenarios to be envisaged, and appropriate responses decided upon that could facilitate the creation of complex procedures expressed as sequences of rules for generalised, hypothetical situations which could then be applied to real incidents when they occurred. The similarity of this language to that found in both casuistic *gnōmai* and written laws is striking and shows that similar principles were at work in the formulation and expression of existing ‘oral laws’ to those used in the composition of new rules or agreements.

## II. Oral and Written laws in the Near East

As we saw in the previous chapter, the societies and institutions of the Greek Iron Age and Archaic period did not develop in isolation, but probably grew out of the systems that had evolved in Bronze Age communities and were undoubtedly influenced by the civilisations and cultures that they came into contact with. This contact can be seen in the plethora of poetic and narrative tropes, formulas and genres that seem to have been imported into Greek culture during the Bronze and Iron Ages.<sup>419</sup> Embedded in these ‘literary’ art forms were normative expressions uttered and exhibited by narrators and characters, which also appear to have been assimilated into the poetic and storytelling traditions of the Greeks themselves. Collections of proverbs and stories in the form of ‘wisdom literature’ were common across many Near Eastern cultures, drawing together catalogues of normative statements and narratives to inform the audience and persuade them that the narrator’s point of view is supported by the sheer bulk of a community’s norms gathered in a single passage.<sup>420</sup>

The sentiments, formulas, style and form of Hesiodic didactic poetry in particular seem to have taken their cue from similar exhortative works among Near Eastern peoples and combined them with the diction and metre of Greek epic. Moreover, the correspondences

---

<sup>417</sup> See pp. 151-55, 162-79

<sup>418</sup> See pp. 150-59

<sup>419</sup> Burkert, W. (1992, pp.41-127), West, M. L. (1997, pp.107-217)

<sup>420</sup> West, M. L. (1978, pp.3-22)

between the structures and formulaic language found in oaths of Greek literature and those found in Near Eastern texts are striking and suggest that frequent interaction with Levantine and Anatolian peoples was infusing oath-taking idioms from their cultures into the speech of Greeks.<sup>421</sup> Several terms referring to the offering, taking, breaking and character of Greek oaths have been identified that have a number of close parallels in both Hebrew and Akkadian, among which are the words for making peace-treaties (φιλότητα καὶ ὄρκια - ‘friendship and oaths’) and alongside which appear shared concepts of loan, interest and units of commercial exchange.<sup>422</sup> A particularly notable example is the expression for sealing an oath itself which in Homer appears as *horkia pista tamein* ‘to cut trustworthy oaths’ which has been linked to similar expressions in Phoenician, Hebrew and other Semitic texts referring to the ritual of walking between the two halves of a dismembered sacrificial victim mentioned in a number of both Greek and Levantine sources.<sup>423</sup>

By the end of the Iron Age, the peoples of the Near East also had a long, shared history of both oral and written legal traditions which had grown up and spread over many centuries to provide both the principles and the language to enable communities to govern themselves and one another. Writing and written law had been in use in the kingdoms of Mesopotamia and Anatolia since the Bronze Age and their texts preserve rules and a formulaic normative language which spread and became part of a vast plethora of spoken and manuscript traditions, which nonetheless bear remarkable similarity to one another, across Near Eastern societies ranging in size from the mighty Assyrian empire to the city-states of the Levant.<sup>424</sup> Correspondences between the rules and language of Greek legislative texts like the Gortyn law code and the monumental *Codex Hammurabi*,<sup>425</sup> written a millennium before our first Greek written laws, or the archives of Hittite laws<sup>426</sup> which span the 16<sup>th</sup> through to the 12<sup>th</sup> centuries

---

<sup>421</sup> Bachvarova, M. R. (2007, pp.179-81), West, M. L. (1997, pp.18-24), Burkert, W. (1992, pp.67-68), Weinfeld, M. (1973, pp.197-99)

<sup>422</sup> Weinfeld, M. (1973, pp.190-99), West, M. L. (1997, pp.22-24), Westbrook, R. (2003, p.24)

<sup>423</sup> See p.120n. Priest, J. F. (1964, pp.48-56), Weinfeld, M. (1973, pp. 196-97), West, M. L. (1997, pp.22-23), Bachvarova, M. R. (2007, p.181) Gen.15:7-27, Jer.34:18-19, Plato *Laws* 753d

<sup>424</sup> Bachvarova, M. R. (2007, pp.179-80), Blenkinsopp, J. (1992, pp.200-4), Walzer, M. (1994, p.107), Raaflaub, K. A. (2000, pp.50-55) Westbrook, R. (2003, pp.1-24)

<sup>425</sup> Westbrook, R. (2003, p.17), Gagarin, M. (2008, pp.122, 146-59), West, M. L. (1997, pp.42-43, 125-26, 310-12)

<sup>426</sup> Sealey, R. (1994, pp.35-36)

BCE<sup>427</sup> have been much discussed,<sup>428</sup> with several passages of Greek laws bearing striking resemblance to these older texts. Moreover, the use of a similar form of words to express norms in Greek poetic texts that pre-date our earliest legal inscriptions, the appearance of shared normative formulas between Greek and Near Eastern texts<sup>429</sup> and the narrative context of the legal passages in the Hebrew Bible suggest that some of these methods for expressing and organising rules may have permeated into the Greek world through stories, songs and poetry before they adopted the practice of publishing laws in writing.

The *Codex Hammurabi* with its repeated introductory formula ‘*šum-ma a-wi-lum*’ ‘if a man’ resembles the habits of using conditionals, indefinites and the word ‘*anēr*’ in both the legal inscriptions we shall see in the next chapter and the normative poetic texts that are the subject of this one.<sup>430</sup> As in laws, spoken *gnōmai* and oaths of agreement, this formula can be varied and the subject inverted in order to denote different permutations and alternatives. For example *CH* 2 (col.5.33-56) details a kind of trial by ordeal that works in a similar way to Homeric oath-challenges<sup>431</sup> and has a formulation reminiscent of the wagers and duels discussed above, using variations on casuistic formulas to denote the main provision and contrast the two opposing outcomes. Moreover, some of the organisational and contextual features of the *Codex Hammurabi*, like its tendency to list rules in binary pairs,<sup>432</sup> bear closer resemblance to the uses of rhetorical *gnōmai*, oaths and oath-challenges in Homeric and Hesiodic poetry than Greek legal inscriptions. Likewise, the text demonstrates a Mesopotamian penchant for creating lists which was not restricted to monuments or archives,<sup>433</sup> but was also reflected in Near Eastern and Greek traditions of ‘catalogue poetry’.<sup>434</sup>

Evidence of cultural contact between Greek poetic traditions of the 8<sup>th</sup> and 7<sup>th</sup> centuries and those of the Near East along with the number of similarities of language, formulas and rituals that are common between Homeric and Hesiodic norms and the legal collections of Mesopotamia, Anatolia and the Levant, suggests that Greek-speakers were coming into contact

---

<sup>427</sup> Westbrook, R. (2003, p.10), Haase, R. (2003, pp.619-24)

<sup>428</sup> Gagarin, M. (2008, pp.146-75), West, M. L. (1997, pp.42-43, 125-34, 310-12), Sealey, R. (1994, pp.30-58)

<sup>429</sup> West, M. L. (1997, pp.19-24), Westbrook, R. (2015, pp.47-52, 66-67)

<sup>430</sup> See pp.110, 116, 150-59

<sup>431</sup> Thür, G. (1996, p.70)

<sup>432</sup> Gagarin, M. (2008, pp.156-57) cf. *CH* 209-14 (col.34.22-72) which details in descending order, the penalties for causing miscarriage in women of different status, each of which carries a supplementary penalty should the woman herself be killed.

<sup>433</sup> Westbrook, R. (2003, pp.16-18)

<sup>434</sup> Bachvarova, M. R. (2016, pp.290-92)

with such traditions, adopting several of their features into their own normative cultures and adapting them for their own purposes.<sup>435</sup> The similarities of ideas and modes of expression both in written law and oral poetry across such great distances and a thousand years of history at a time when alphabetic Greek was in its infancy, suggest that Greek-speakers may have been accessing, using and adapting these traditions in a variety of spoken forms, including formalised diction, rhetoric and poetry, across several centuries. It is highly likely that these Near Eastern legal texts, which were probably both dictated and read aloud, took their cue from and in their turn influenced the developments of the oral normative language, beliefs and rules that appear in the rhetorical and wisdom poetry that had such a profound influence on early Greek traditions.<sup>436</sup>

### **The rules of the Hebrew Bible**

A particularly interesting set of texts to compare with both the normative language and poetic rhetoric of the Greeks comes from the normative sections of the Hebrew Bible which give indications of the combinations of oral and written traditions that were being used, adapted and recorded by a West Semitic people in the first half of the first millennium BCE – roughly contemporary with Homer and Hesiod and taking their final form just as the first written laws were beginning to appear in Greece.<sup>437</sup> Like other Near Eastern legal works the books of Exodus, Deuteronomy and Leviticus show features suggestive of influences from traditions going back to Mesopotamian law with passages that clearly address similar issues with comparable solutions and using similarly normative language.<sup>438</sup> These similarities may have developed partly under the influence of Mesopotamian scribal

---

<sup>435</sup> See pp.90-92 Westbrook, R. (2015, pp.1-68), Raaflaub, K. A. (2000, pp.50-57), Burkert, W. (1992), West, M. L. (1997), Bachvarova, M. R. (2016)

<sup>436</sup> Westbrook, R. (2003, pp.12-13) notes the fact that such texts were still reliant on oral communication as decrees were most likely composed and dictated and suggests (pp.16-18) that the interest in collecting casuistic rules into lists was drawn from the realm of Mesopotamian science and that texts of this type originated from debates surrounding contentious points that developed them into the rules and variations we see in the text.

<sup>437</sup> Walzer, M. (1994, pp.105-7), Westbrook, R. (2003, p.9), Hagedorn, A. C. (2017, pp.117-19)

<sup>438</sup> Patrick, D. (1973, p.181), Blenkinsopp, J. (1992, p.202), Westbrook, R. (2003, pp.1-88, 2015, pp.2-8). Two particular examples of rules in Exodus which parallel the text of Hammurabi's laws are: Exod.21:28-32, 35-36 cf. *CH* 250-52 which specify the differences in responsibility between owners of oxen who had never gored anyone and those known for it (a similar set of laws in the Greek-speaking world can also be found in *IC IV* 41.1.1-3.17 which details the rights and obligations of farmers concerning damages done by livestock), and Exod.21:2-6 cf. *CH* 117 which address rules regarding slavery (cf. *IC IV* 41.4.5-7.19)

traditions which continued to copy texts like the *Codex Hammurabi* for educational purposes long after they were first created,<sup>439</sup> but it also seems to draw on oral traditions of rhetoric, religious and didactic poetry.

The rules are incorporated into the narrative of Moses receiving God's law and also contain elements of rhetorical, didactic, magical and religious formulaic language<sup>440</sup> in their blending of oral storytelling speech-patterns with simple, pragmatic rules.<sup>441</sup> Several passages are expressed in a language that echoes the casuistic diction and organisation of texts like the *Codex Hammurabi*, but develops it to suit the audience, reflecting the values of the Israelites with their culture of debating and interpreting the law, using a greater variety of phrases to differentiate clauses, and combining practical casuistic laws with other forms of normative speech, such as apodictic commandments or even curses.<sup>442</sup> Therefore, like the normative passages of Hesiod and the rhetorical *paradeigmata*, *gnōmai* and oaths of Homeric speakers, the covenant law books of the Hebrew Bible are embedded in essentially literary works that combine normative material with persuasive and instructive narrative and are as much a product of spoken and performative literary culture as a scribal one.<sup>443</sup>

*Substantive rules: apodictic rules and curses*

The 'legal' sections of the books of Exodus and Deuteronomy begin with the apodictic laws of the Decalogue (Exodus 20.2-13 cf. Deuteronomy 5.6-17) which are a series of straightforward commandments and prohibitions drawing authority directly from their status as the word of God.<sup>444</sup> They begin with the fundamental demands to honour God alone without graven images and to keep the Sabbath. These are then followed by a series of basic social mores, beginning with an injunction to honour one's parents before a series of prohibitions expressed in the form 'thou shalt not...' (the privative לֹא preceding an imperfect form of the verb):

הַאֲדָמָה, אֲשֶׁר-יְהוָה אֱלֹהֶיךָ נָתַן  
 11 Honour thy father and thy mother, that thy days may be  
 לְךָ long upon the land which the LORD thy God giveth thee.

<sup>439</sup> Gagarin, M. (2008, pp.148-51)

<sup>440</sup> Walzer, M. (1994, pp.106-18)

<sup>441</sup> Bartor, A. (2012, pp.292-311)

<sup>442</sup> Kaiser, O. (1975, pp.56-61)

<sup>443</sup> Bartor, A. (2012)

<sup>444</sup> Walzer, M. (1994, p.102), Frymer-Kenski, T. (2003, pp.975-76)



לא תרצח, לא תנאף; לא תגנב, לא-תענה ברעך עד שקר. **12** Thou shalt not murder. Thou shalt not commit adultery. Thou shalt not steal. Thou shalt not bear false witness against thy neighbour.

לא תחמד, בית רעך; לא-תחמד אשת רעך, ועבדו ונאמתו ושורו וחמרו, וכל, אשר לרעך. **13** Thou shalt not covet thy neighbour's house; thou shalt not covet thy neighbour's wife, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor any thing that is thy neighbour's.

This collection creates a network of substantive rules bounding various types of behaviour backed by the authoritative voice of God. These commandments are given further divine support when, near the end of the normative section of Deuteronomy, they are supplemented with curses for those who infringe the rules laid out.<sup>445</sup>

ארור האיש אשר יעשה פסל ומסכה תועבת יהוה, מעשה ידי חרש--וּנְשֵׁם בְּסֵתֶר; וְעָנוּ כָּל-הָעָם וַאֲמָרוּ, אָמֵן. **15** Cursed be the man that maketh a graven or molten image, an abomination unto the LORD, the work of the hands of the craftsman, and setteth it up in secret. And all the people shall answer and say: Amen.

ארור, מקלה אביו ואמו; ואמר כל-העם, אמן. **16** Cursed be he that dishonoureth his father or his mother. And all the people shall say: Amen.

ארור, מסיג גבול רעהו; ואמר כל-העם, אמן. **17** Cursed be he that removeth his neighbour's landmark. And all the people shall say: Amen.

ארור, משגה עור בדרך; ואמר כל-העם, אמן. **18** Cursed be he that maketh the blind to go astray in the way. And all the people shall say: Amen.

ארור, מטה משפט גר-יתום--ואלמנה; ואמר כל-העם, אמן. **19** Cursed be he that perverteth the justice due to the stranger, fatherless, and widow. And all the people shall say: Amen.

ארור, שכב עם-אשת אביו--כי גלה, כנף אביו; ואמר כל-העם, אמן. **20** Cursed be he that lieth with his father's wife; because he hath uncovered his father's skirt. And all the people shall say: Amen

<sup>445</sup> Deut.27:15-26, Frymer-Kenski, T. (2003, p.976)

The formulaic repetition of the word אָרוּר (accursed) and their concluding אָמֵן (And all the people shall say: Amen') confers solemnity on rules whose subject matter conforms closely with the basic tenets of the decalogue and implies that divine punishment awaits those who break their covenant with God.

Similar syntactical structure and patterning can be seen in Hesiod's collection of rules that incur the displeasure of Zeus in *Op.*327-34 which creates a very similar network of rules to the prohibitions and principles of the Decalogue, also backed by an ultimate, divine authority, and with threats akin to the Deuteronomic curses. Moreover, as Ben-Dov has shown, there are many parallels between the appeals to such divine retribution found in Greek invocations and the curse-poetry of Hebrew and Akkadian literature.<sup>446</sup> This suggests similarities not only in the content and style of these major rules, but also of their rhetorical application, calling on individuals to respect basic social tenets like defence of the vulnerable and honouring the gods, and voicing the expectations that the gods will hear prayers and avenge those who break their ordinances.

### *Penology and Procedure*

In the books of Exodus and Deuteronomy, the rules of the Decalogue are followed by a number of casuistic rules which provide procedures and deterrents for those who infringe these basic principles and address a number of associated issues. The first of these rules in Exodus address the issue of slavery (Exod. 21.2-6) using a variety of marked syntax to delineate main provisions from sub-clauses:

- |                                                                                                                                       |                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| כִּי תִקְנֶה עֶבֶד עִבְרִי, שֵׁשׁ שָׁנִים יַעֲבֹד; וּבְשִׁבְעֵת--יֵצֵא לְחֻפְשֵׁי, חֲנָם.                                             | 2 If thou buy a Hebrew servant, six years he shall serve; and in the seventh he shall go out free for nothing.                                        |
| אִם-בָּגַפוּ יָבֵא, בָּגַפוּ יֵצֵא; אִם-בָּעַל אִשָּׁה הוּא, וְיִצְאָה אִשְׁתּוֹ עִמּוֹ.                                              | 3 If he come in by himself, he shall go out by himself; if he be married, then his wife shall go out with him.                                        |
| אִם-אֶדְנִי יִתֶּן-לוֹ אִשָּׁה, וְיִלְדָה-לוֹ בָּנִים אוֹ בָנוֹת--הָאִשָּׁה וְיִלְדֶיהָ, תִּהְיֶה לְאֶדְנֶיהָ, וְהוּא, יֵצֵא בָגֹפוֹ. | 4 If his master give him a wife, and she bear him sons or daughters; the wife and her children shall be her master's, and he shall go out by himself. |

---

<sup>446</sup> Ben-Dov, J. (2006, pp.431-51)

ואם-אמר יאמר, העבד, אהבתי את- 5 But if the servant shall plainly say: I love my master, my wife, and my children; I will not go out free; אדני, את-אשתי ואת-בני; לא אצא, חפשי.

והגישו אדניו, אל-האלהים, והגישו 6 then his master shall bring him unto God, and shall אלו-הדלת, או אל-המזוזה; ורצע bring him to the door, or unto the door-post; and his אדניו את-אזנו במרצע, ועבדו master shall bore his ear through with an awl; and he shall לעלם. serve him for ever.

The casuistic syntax of these rules is marked by the distinction between the introductory particle ‘*ki*’ (כי) and the conditional ‘*im*’ (אם) to differentiate overarching provisions from sub-clauses indicating variations.<sup>447</sup> This can be seen in the details about slave marriage and reproduction in verses 3 and 4 where three separate possibilities are entertained: a slave already being married, a slave being unmarried and a slave having children by a wife given to him by his master. In verse 5, the connecting particle ‘*ve*’ (ו) is used to mark a provision that contrasts with the main ones - the refusal of a slave to leave his master’s service. This particle is also used to connect details to a single protasis - such as the conditions surrounding a slave getting married and begetting children after he entered service in verse 4 – or to unite the stages of a more complex apodosis – like the ritual procedure in verse 6 that allows him to be bound to the house forever.

We can also see the practice of using multiple apodoses from a single protasis to set out more complex procedures with allowances for different actors and their circumstances in Exod.21.12-14 which details a number of crimes punishable by death, as well as a highly formulaic diction for setting out both offences and penalties.

מכה איש ומת, מות יומת 12 He that smiteth a man, so that he dieth, shall surely be put to death.

ואשר לא צדה, והאלהים אנה 13 And if a man lie not in wait, but God cause it to come to לידו--ונשמתי לה מקום, אשר ינוס שמה.

<sup>447</sup> Patrick, D. (1973, pp.180-82)

14 And if a man come presumptuously upon his neighbour, to slay him with guile; thou shalt take him from Mine altar, that he may die.

15 And he that smiteth his father, or his mother, shall be surely put to death.

16 And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.

17 And he that curseth his father or his mother, shall surely be put to death.<sup>448</sup>

These adopt a slightly different style, without ‘if-clauses’ introduced by *ki* or ‘*im*’ (with the exception of verse 14 which begins with ‘*ve ki*’), but nevertheless retaining their casuistic force and sense of structure between clauses and sub-clauses. The main provisions in verses 12, 15, 16 and 17 prescribe capital punishment using only a verb to introduce the protasis, and repeating the formula מות יומת (*moth yumath* – he shall be surely put to death) in the apodosis.<sup>449</sup> Verses 13-17 are all connected to 12 by the introductory ‘*ve*’ (ו) suggesting that they are all sub-clauses of the main provision. Verses 13 and 14 qualify the central provision in verse 12 (that a killer shall be executed) by contrasting the procedures for accidental homicide and the use of ‘guile’ (בְּעָרְמָה), with the latter removing the protection of sanctuary from those who commit pre-meditated and deceitful murder. These are distinguished from one another by different types of casuistic introductions: verse 13 uses the relative pronoun אֲשֶׁר (*asher*), much as several Greek casuistic clauses use ὅς, while verse 14 uses the word אִישׁ (*ish* - man) as the subject of the hypothetical situation, much as Greek norms use the word *anēr* or Hittite and Mesopotamian laws use expressions meaning ‘if a man...’.

Similar patterning can be seen in longer sections like Deuteronomy’s rules on sexual misconduct where main provisions (Deut.22.13-21, 22, 23-26, 28 and 29) are signified and differentiated with ‘*ki*’ (כִּי), while exceptions and variations are indicated with ‘*im*’ (אִם) (20-21 and 25-26).<sup>450</sup> Both the exceptions are connected to their main provisions with the particle

---

<sup>448</sup> Exod.21:12-17

<sup>449</sup> The same formula is used in the capital punishment rules in Lev.20.9-16

<sup>450</sup> This is not necessarily uniformly used as ‘*ki*’ (כִּי) need not only be used to mark an overarching provision, though it often does, but it always differentiates a provision from one beginning with ‘*im*’ (אִם). Thus, just like the variations between conditionals and indefinites

‘ve’ (ו) as are the different conditions of the protases (14, 22, 23, 25, 28) or the procedures of the apodoses (15-19, 21, 24, 26, 29). This appears at (27) which seems to qualify the distinction between the rule that a woman raped in a city should be put to death, while one raped in a field should have impunity because she is assumed to have cried for help but none would have been forthcoming:

כי בשדה, מצאה; צעקה, הנער המארישה, ואין מושיע, לה.

For if he found her in the field; the betrothed damsel cried,

And (ve) there was none to save her.

Likewise, the use of ‘ve’ (ו) to connect different components of a complex procedure can be seen in the requirements of witness testimony or the decision of the Levites to prove a charge of heresy in Deut.17:2-10. Moreover we find further patterning and structural definition in the repeated use of formulas like מות יומת (*moth yumath* - ‘he shall surely be put to death’), which can be found in other sections setting out offences worthy of capital punishment,<sup>451</sup> or the use of איש (*ish* – ‘a man’) in conjunction with the relative pronoun אשר (*asher* - ‘who’, which appears as a formula at the start of a sequence of curses at Deut.27.15 and is understood throughout the list (16-26).

ארור האיש אשר יעשה פסל ומסכה תועבת יהוה, מעשה ידי חרש--ושם בסתר

Cursed (ארור) be the man (האיש) who (אשר) maketh a graven or molten image, an abomination unto the Lord, the work of the hands of the craftsman, and setteth it up in secret.

This use of patterned casuistic diction marking out the starts of both main provisions and sub-clauses, and the use of connecting particles to show how additional factors can be linked to or contrasted with a main provision is similar to the differentiated uses of the conditional and indefinite constructions introduced by the relative pronoun in the oath in *Iliad* 3 and the uses of μέν and δέ both in it and the *gnōmē* of the *Litai* in *Il.9.508-12*. The ability to use this diction to show several components of a protasis or mark a multi-stage apodosis is very similar to the way that the oath in *Iliad* 3 considers the alternate possibilities of the

---

in Greek casuistic norms, the alternate forms are used to distinguish between different layers of provision or to separate different sets of provisions.

<sup>451</sup> Cf. Lev.20.9-16

Trojans honouring or breaking the terms of the duel should Menelaus win or the different outcomes for plaintiff and accused if compensation is accepted in *Il.9.632-36*. The capacity to use formulas like *moth yumath* and *'ish asher* adds clarity and power through their repetition, like the repeated or inverted phrases of the terms of the duel. Moreover, the use of *'ish*, whether in conjunction with conditions, relative pronouns or neither is very similar to the formula *šum-ma a-wi-lum* of Hammurabi and the Greek use of the word *anēr* in normative speech, while the use of *moth yumath* to reinforce the fact that sinning against one's parents is worthy of death is similar in both its effects and sentiments to *Works and Days* 321-34 and is a pattern reflected in the famous Teos curses: an inscription that is also evocative of the list of curses in Deut.27.15-26.<sup>452</sup>

### *Rhetorical and Narrative features*

The covenant law books combine the rules of God, which follow a similar pattern to those of Mesopotamian kings, with numerous features intended to persuade followers to adhere to them and thus show an awareness of the value of rhetorical patterned diction in impressing rules on readers and enforcing them. The laws of Exodus, Leviticus and Deuteronomy are all presented as part of a narrative that situates them as the covenant presented to Moses in Horeb, rooting their provenance in this legendary event and also embedding the law in the Israelites' storytelling traditions. The laws of the Israelites are also 'laws with reasons',<sup>453</sup> with several rules accompanied by a normative<sup>454</sup> or historical<sup>455</sup> basis for the way they treat certain topics. While such justifications never appear in the written laws of the Greek world, some are rooted in abstract ideals of justice very reminiscent of the norms of Greek didactic poetry, and the growth of legends of 'lawgivers' that explain the context and principles behind legislation demonstrate a similar use of narrative tradition to propagate, interpret and comprehend a community's laws. This suggests an important point of convergence between the creation of legal compilations and other sources of normative authority in both Greek and Hebrew legal

---

<sup>452</sup> See pp.114-16, 232-35

<sup>453</sup> Walzer, M. (1994, pp.111-13), Frymer-Kenski, T. (2003, p.979), Ben-Dov, J. (2006, pp.431-32), Bartor, A. (2007, pp.236-40)

<sup>454</sup> Cf. The gnomic exhortative character of Deut.16.20 with its repetition of the word 'justice' *ṭṣḏk* (*tsedek*) to emphasise the moral purpose behind the provision.

<sup>455</sup> Blenkinsopp, J. (1992, p.199) for instance, the rules on slavery in Deuteronomy which conflict with those in Leviticus are coloured by a reminder, in the Deuteronomic laws of the Israelites' own enslavement in Egypt.

cultures, with legal writing acquiring its own ‘histories’ in the popular consciousness of the Greek *poleis*, often being justified and explained in light of these traditions.<sup>456</sup>

For instance the expectations of judges given in Deut. 16.18-20 are given additional weight by stating the importance of their god-given duty to be just and fair in all their dealings (18), much as Hesiod describes the duties of a good *basileus*.<sup>457</sup>

18 Judges and officers shalt thou make thee in all thy gates, which the LORD thy God giveth thee, tribe by tribe; and they shall judge the people with righteous judgment.

19 Thou shalt not wrest judgment; thou shalt not respect persons; neither shalt thou take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous.

20 Justice, justice shalt thou follow, that thou mayest live, and inherit the land which the LORD thy God giveth thee.

This sentiment is then bolstered by a series of three prohibitions (19) introduced by *לֹא* (*leh*) and evocative of the rules of the decalogue – the final one of which pertains to the receiving of gifts, clarifying with the particle *כִּי* (*ki*) that gifts are a distraction from the proper execution of justice. It concludes (20) with a gnomic exhortation reinforced by anaphora of the word *צְדָק* (*tsedek* (justice) - forms of which conclude the previous two provisions – and a statement of the benefits of following the Lord’s commandments.

Other explanations are based in more worldly understandings of what is just, such as the rules on sexual misconduct in Deut.22.23-29 which justify their contrasting treatment of women who are seduced in the city with those who are raped in the countryside on the basis of whether they are able to cry for help (22.27).<sup>458</sup> Likewise, the laws about credit and security in

<sup>456</sup> Hagedorn, A. C. (2017, pp.124-26) *See pp.238-49*

<sup>457</sup> *Th.80-103*

<sup>458</sup> Both prescribe the death by stoning for the seducer or rapist for dishonouring the (prospective) husband. The distinction is for the woman who is assumed to have cried out in the field but not been heard and so guiltless, but if she was not heard in the city, it is deemed that she cannot have cried out and therefore the law prescribes that she be stoned with her seducer.

Exod.22.24-26 is given an explanation based on the loss surety may represent for an impoverished man.<sup>459</sup> This is lent greater emotive weight by a rhetorical question ‘wherein shall he sleep?’ and an assurance that his prayers will be answered with the threat of divine retribution on the one who has caused this suffering.<sup>460</sup>

- אם-בְּסוֹף תִּלְוֶה אֶת-עַמִּי, אֶת-הָעֲנִי עִמָּךְ--לֹא-תִהְיֶה לוֹ, כְּנֹשֶׁה; לֹא-תִשְׂמוֹן עָלָיו, נֶשֶׁךְ. **24** If thou lend money to any of My people, even to the poor with thee, thou shalt not be to him as a creditor; neither shall ye lay upon him interest.
- אם-חָבַל תִּחְבַּל, שְׁלֵמַת רֵעֶךָ--עַד-בֹּא הַשָּׁמֶשׁ, תִּשְׁבְּרֵהוּ לוֹ. **25** If thou at all take thy neighbour's garment to pledge, thou shalt restore it unto him by that the sun goeth down;
- כִּי הוּא כְסוּתוֹ לְבָדָהּ, הוּא שְׂמֹלְתוֹ לְעֵרוֹ; בְּמָה יִשְׁכַּב--וְהָיָה כִּי-יִצְעַק אֵלַי, וְשָׁמַעְתִּי כִּי-חֲנוּן אֲנִי. **26** for that is his only covering, it is his garment for his skin; wherein shall he sleep? and it shall come to pass, when he crieth unto Me, that I will hear; for I am gracious.

Several rules are also qualified by the Israelites’ own history of enslavement in Egypt,<sup>461</sup> which of course is an inherent part of the texts’ narrative context and consequently further blurs the boundary between normative discourse as collections of rules and part of the community’s history to produce a text which is organised, detailed and both instructive and persuasive in tone.

<sup>459</sup> Ben-Dov, J. (2006, pp.435-38)

<sup>460</sup> Bartor, A. (2012, pp.293-94)

<sup>461</sup> For example, it is used to justify the importance of keeping the Sabbath day in the Deuteronomic decalogue:

- וְזָכַרְתָּ, כִּי עֶבֶד הָיִיתָ בְּאֶרֶץ מִצְרַיִם, וַיֹּצֵאֲךָ יְהוָה אֱלֹהֶיךָ מִשָּׁם, בְּיָד חֲזָקָה וּבְזֶרַע נְטוּיָה; עַל-כֵּן, צִוָּךְ יְהוָה אֱלֹהֶיךָ, לַעֲשׂוֹת, אֶת-יוֹם הַשַּׁבָּת. **14** And thou shalt remember that thou was a servant in the land of Egypt, and the LORD thy God brought thee out thence by a mighty hand and by an outstretched arm; therefore the LORD thy God commanded thee to keep the sabbath day

Of looking after one’s slaves (Deut. 15.12-18):

- וְזָכַרְתָּ, כִּי עֶבֶד הָיִיתָ בְּאֶרֶץ מִצְרַיִם, וַיִּפְדֶּךָ, יְהוָה אֱלֹהֶיךָ; עַל-כֵּן אֲנִי מְצַוֶּךָ, אֶת-הַדְּבָר הַזֶּה--הַיּוֹם. **15** And thou shalt remember that thou wast a bondman in the land of Egypt, and the LORD thy God redeemed thee; therefore I command thee this thing today

And of being kind to strangers (Exod.22.20):

- וְגֵר לֹא-תוֹנֶה, וְלֹא תִלְחָצֶנּוּ: כִּי-גֵרִים הָיִיתֶם, בְּאֶרֶץ מִצְרַיִם. **20** And a stranger shalt thou not wrong, neither shalt thou oppress him; for ye were strangers in the land of Egypt



Likewise, rhetorical exhortations and *enthymēmai* based on *gnōmai*, invoking abstracts like ‘justice’ or simple practical realities, are key components of the style and form of both Greek and Near Eastern didactic poetry. This resemblance is evident in Hesiod’s pleas to his brother and the *dōrophagoi basilees* in the *Works and Days*, not only in their sentiments but also in the combinations of different commands, reasons and gnomic expressions to impress its rules and morals on the intended audience. Justification based on the past is also a feature of Homeric rhetoric, where paradigmatic tales are narrated before being summed up either as exhortations or *gnōmai* to exemplify how an addressee should behave. This suggests that the Greek normative diction that facilitated the creation of written laws was, like that of the Israelites, incorporated into traditions of narrative and rhetorical poetry that went back long before the creation of written law, and connected them with the legal language of their neighbours in Mesopotamia, Anatolia and the Eastern Mediterranean. Moreover, as we shall see, while Greek written laws themselves do not contain such explanatory details, the need to clarify the law and understand it through rhetorical, philosophical or historical narratives persisted and remained an important part of the ways that law entered their wider normative discourse.<sup>462</sup>

### Conclusions

Since we have no evidence for Greek written laws before the late 7<sup>th</sup> century BCE the rules that regulated the types of institutions discussed in the previous chapter and the *dikai* and *themistes*, which are regarded as necessary for maintaining order in hexameter poems, must have been transmitted by word of mouth. In order to understand the form that such ‘oral laws’ might have taken, this chapter has examined the formulaic, casuistic language for expressing rules, and the syntax for listing them that appear in the persuasive promises, threats, *gnōmai* and oaths found in the Homeric epics and the poetry of Hesiod. It has argued that the combination of clear casuistic language, a sense of shared ideals and the divinely-backed authority to enforce or create rules that would come to be invoked by written legal inscriptions, and which marks texts out as normative,<sup>463</sup> was already present in the oaths, imprecations and *gnōmai* of persuasive poetic passages. This vocabulary and diction was a critical part of how rules were composed, providing the ability to hold real behaviours up to the abstract ideals of

---

<sup>462</sup> Hagedorn, A. C. (2017, pp.124-26) See pp.231-41

<sup>463</sup> Harris, E. M. (2004, pp.21-22), Sealey, R. (1994, pp.1-12, 91-111)

*dikē*, *themis* and *kosmos* and describe the expected consequences of particular actions in order to sanction or condemn. Moreover, the use of connecting particles, formulaic language and variations of syntax gave the earliest Archaic Greek poets and speakers the syntactical structure to formulate, create and collect rules of varying complexity in both their specific agreements and more generalised *gnōmai*.

The syntax that allowed hypothetical scenarios to be given definite outcomes and to add multiple layers of complexity so that different circumstances could be considered is also one of the features that distinguishes the language of the written laws that began to appear on inscriptions from the late 7<sup>th</sup> century and throughout the 6<sup>th</sup>. As we shall see in chapters 3 and 4, the technology of writing gave communities a single, immutable voice which was relatively simple to follow, but could never fully replace more traditional means of articulating and carrying out justice. In the 6<sup>th</sup> and 5<sup>th</sup> centuries, poetry, stories, oaths and normative maxims remained key means of expressing and evaluating social mores and the normative discourse of *themis*, *dikē* and *kosmos* continued to be used by Archaic lyric poets<sup>464</sup> and preserved in Classical philosophers<sup>465</sup> even though they describe societies very different from those of the Homeric epics and which were starting to understand rules in different ways in light of the arrival of written law. Likewise, the *gnōmai* of Homer and Hesiod were still being quoted by Plato, Aristotle and Athenian orators in the 4<sup>th</sup> century,<sup>466</sup> suggesting that both the morals they expressed and their modes of transmission were valued alongside written laws as components of a citizen's normative framework.

This culture of beliefs and rules expressed with formulaic normative syntax also drew on similar traditions from the Near East which already had a long history and which existed in a number of spoken and written forms. Like the Greeks, and all legal systems since, the legal texts of Mesopotamia, the Hittites and the Hebrew Bible could never fully divorce themselves from the oral culture that they used to shape and communicate their rules. We have considerable evidence for Near Eastern normative formulas and rituals permeating into Greek poetic discourse along with their style and other artistic and technical skills before the appearance of Greek legal writing.<sup>467</sup> This seems to have helped to shape the spoken rules of

---

<sup>464</sup> Humphreys, S. C. (1988, pp.468-9), Papakonstantinou, Z. (2008, pp.107-12), Anhalt, E. K. (1993, pp.11-17)

<sup>465</sup> Mirhady, D. C. (2007, pp.54-55)

<sup>466</sup> Ford, A. (1999, pp.233-35), Halliwell, S. (2000, pp.94-112), Goldman, H. (2009, pp.444-67)

<sup>467</sup> Bachvarova, M. R. (2007, pp.179-81), West, M. L. (1997, pp.18-24), Burkert, W. (1992, pp.67-68), Weinfeld, M. (1973, pp.197-99)

the Greeks in their rhetoric and poetry as much as it would come to influence their written law, using their own normative syntax and vocabulary to translate and reinterpret rules drawn from both their own traditions and those they encountered in the network of communities of the Eastern Mediterranean.

## Chapter 3

### The Anatomy of Greek Legal Inscriptions

In order to understand how the types of ‘oral laws’ that we saw in the previous two chapters impacted the evolution of legal writing and where the language and imperatives behind written legislation came from, it is necessary to consider the diction, concerns and solutions of the earliest written laws in light of the syntactical and social structures we have seen in Homer and Hesiod. When writing was first adopted for legislative use, we can reasonably expect that this should have been used in support of the traditional function of rules and institutions and incorporated the speech patterns that were already in use in their dispute resolution culture.<sup>468</sup> Moreover, even as legal texts brought about significant changes in the ways that law was understood and individual provisions could be used, the continuing dialogue between written laws and the discourses of rhetoric, philosophy, stories and poetry that grew and developed alongside legal writing<sup>469</sup> must have continued to infuse the language and beliefs of the Greeks’ spoken culture into their normative inscriptions.

This chapter will therefore examine the language of legal inscriptions to identify the features that made them useful, recognisable and authoritative sources of law, and to understand the origins and evolution of these features. Analysis of the prescripts of normative inscriptions will reveal concerns for communal agreement and divine sanction that reflect a similar importance of community consensus and religious authority to that found in Homeric and Hesiodic notions of *dikē* and *themis*, and we find evidence that our earliest laws incorporated existing systems for selecting officials and regulating behaviour. Likewise, the characteristic, marked syntax of laws and decrees echoes the use of conditionals, indefinites, particles and commands to structure the normative language of Greek oaths, *gnōmai* and imprecations, and the compilations of Near Eastern laws that we saw in Chapter 2. This suggests that such diction and compositional style was influencing the creation of legal inscriptions which not only demonstrate a formalised language for articulating rules, but actually incorporate rhetorical features and verbal markers which confer texture and structure at least as much for listeners as for readers.

---

<sup>468</sup> Thomas, R. (1992, pp. 72-3), Roth, C. P. (1976, pp.334-36)

<sup>469</sup> See pp.205-11, 238-49 Thomas, R. (1996, pp. 14-16)

The earliest written law we have in Greek is one of eight inscriptions from the city of Dreros in Crete that have been dated to the late 7<sup>th</sup> century, and which are thought to have been displayed on the wall of a temple of Apollo.<sup>470</sup> Most of these laws seem to record separate legislative decrees, as several have their own enactment clauses and conclude with an empty space, suggesting a desire to place several decrees in one place even if they did not necessarily form a coherent compilation.<sup>471</sup> The longest and most complete text details the restrictions on the *kosmos*, a senior judicial official, holding his office more than twice in a ten-year period and the consequences if he is found to have done so:

θιός ὄλοιον. | ἄδ'ἔφαδε | πόλι· | ἐπεὶ κα κοσμήσει, | δέκα φετίον τὸν ἀ-  
 φτὸν | μὴ κόσμεν· | αἱ δὲ κοσμησίε, | ὁ[π]ε δικασίε, | ἀφτὸν ὀπῆλεν | διπλεῖ κάφτὸν  
 ἄκρηστον | ἦμεν, | ἄς δόοι, | κῶτι κοσμησίε | μηδὲν ἦμην  
 ὀμόται δὲ | κόσμος | κοὶ δάμοι | κοὶ | ἴκατι | οἱ τᾶς πόλ[ιο]ς

*God be kind (?). The city has determined: whenever a man has been kosmos, for ten years, the same man may not be kosmos;<sup>472</sup> and if he does become kosmos, whatever judgements he passes, he shall owe twice that, and he shall be stripped of office, as long as he lives, and what he passes as kosmos shall be void. And the swearers are the kosmos and the people and the twenty, those that are of the city.<sup>473</sup>*

The inscription begins with a dedication (θιός ὄλοιον.) which slopes a little under the first line before the enactment clause (ἄδ'ἔφαδε | πόλι·) and the rest of the first line is fitted in above. The two provisions are expressed as casuistic rules, the first using an indefinite

<sup>470</sup> *ML* 2, Wilson, J-P. (2009, p. 552) Gagarin, M. & Perlman, P. J. (2016, p.200)

<sup>471</sup> Perlman, P. J. (2004, pp. 193-4), van Effenterre, H. (1946, pp. 588-604), Gagarin, M. & Perlman, P. J. (2016, pp.199-200)

<sup>472</sup> The *kosmos* was some kind of senior Cretan official, though it is uncertain how he was chosen in Dreros, what precisely his function was and whether there were several *kosmoi* or, as this and other texts imply that there was only a single *kosmos*. The term also appears in inscriptions found at Gortyn (cf. *IC* 4.14.g-p) where its use suggests that he had some kind of adjudicatory function and the length of his term is also limited. Gagarin, M. (1986, pp.85, 93-4). Aristotle, generalising for all the *poleis* of Crete in the *Politics* (1271b40ff.), describes the *kosmoi* forming a committee of ten who replaced kings as the major source of political and military power who took decisions in conjunction with Elders while an assembly wielded little real power. For a more detailed analysis see Gagarin, M. & Perlman, P. J., (2016, pp.67-70)

<sup>473</sup> Appendix 3 §1, Meiggs, R. & Lewis, D. (1969, pp. 2-3), Buck, C. D. (1955, pp. 313-4)

construction explaining the law concerning *kosmoi* resuming office and the second with a conditional detailing what the consequences will be if this is broken. The final line of the inscription details three groups whose involvement seems to be to ratify the law, with their designation as ‘ὀμόται’ (*swearers*) implying that this is to be done by means of an oath.<sup>474</sup> The retrograde writing of this final line and the space after it mark the conclusion of the inscription and distinguish this clause from the previous provisions.<sup>475</sup> These visual features and the phrasing of this final provision as a command lay particular emphasis on a clause which appears to pronounce the authority of the κόσμος, δάμιοι and ἕκατι, and stresses that these people represent the will of the *polis* in the concluding phrase οἱ τᾶς πόλ[ι]ος.

The inscription can thus be divided into four parts:<sup>476</sup>

1. A prescript invoking the authority of the god and the community in the aorist tense to recall the moment of enactment.
2. An initial law introduced by an authoritative, all-encompassing indefinite construction, with a protasis in the future tense to express a theoretical possibility and a jussive infinitive apodosis.
3. A few details which clarify, using a conditional (with a future tense protasis and three apodoses in the jussive infinitive), what action should be taken in the event of the law being broken.
4. A clause indicating precisely on whose authority the law was passed.

The casuistic form of the law is given structural definition by both the syntax and the placement of formal authoritative emphasis, making it evident to the audience what the law states, what its permutations might be and the authority behind the decree. Importantly, while these features of the law’s syntax are accentuated by visual markers like word dividers and

---

<sup>474</sup> Gagarin, M. (2008, p. 66), Papakonstantinou, Z. (2008, p. 55). Buck, C. D. (1955, p. 314) sees the ‘swearers’ as being the jurors in the case, just as Gortynian magistrates were required to make decisions ‘under oath’ (*see pp.178-79, 206-9, 218-19*), but this seems unlikely as the *kosmos* would seem to be a magistrate at his own trial unless the oath taken were part of some kind of oath-challenge.

<sup>475</sup> Perlman, P. J. (2004, p.193-4)

<sup>476</sup> These clearly demonstrate Pospisil’s criteria of authority, intention of universal application, *obligatio* and sanction, and thus project the power, practical applicability and clarity that we can expect from a law. The Law’s practicality can also be applied to the ‘trouble-cases’ of Llewellyn and Hoebel and we can see an interaction between the law and other forms of norms through its divine invocation and allusion to oaths. *See pp.17-27*

lacunae, they are primarily verbal cues, suggesting that they are intended to emphasise the structure and details of the legislation as much to listeners as to readers. This language, style and form reverberates in legal texts across the Greek world, which often use the start and end of inscriptions to impress the authority behind the law on their audiences, and structure their rules using similar sets of syntactical and rhetorical cues, suggesting that this was part of a well-developed form for composing legislation that would come to be widely used in inscriptions.

The early date of this text, the clarity and formality of this patterned syntax and the strikingly similar normative language to that found in Homer and Hesiod all point to this type of written legislation drawing heavily on a formal diction from a time before written laws were being used in Greece. The similarities of language, structure and underlying authority between legal inscriptions like this one and the norms we find in earlier poetry, and the distinctiveness of this diction make it likely that it was these features that identified texts as ‘legal’ and suggests that they could have been as much a feature of ‘oral laws’ as written ones. In order to understand the relationship between the forms of ‘oral law’ that we have examined in the previous two chapters, and the written legislation that began to emerge in the *poleis* from the end of the 7<sup>th</sup> century BCE, we must now isolate what ‘legal language’ looked like and what sets normative inscriptions apart from other forms of public texts. This chapter will therefore explore the syntactical types of rules found in written laws across the Greek world in order to identify what Greek laws look like and to compare them with the expressions identified from Homeric and Hesiodic poetry in the previous chapter. This, it shall be argued, gives important insights into the ways that norms were expressed and used in Greek culture, where these speech patterns came from and the social forces at work behind the creation of written laws.

### **I. Prescripts and Postscripts: The Authority of Law**

Many laws from Greek *poleis* begin and end with explicit statements of the authority by which the legislation was passed, appealing to the gods, the people and the legislative organs of the *polis* in their prescripts, enactment clauses and closing statements. While the political institutions behind the legislation in different communities may have varied hugely, the texts often share an emphasis on the religious and public approval of their rules. Greek city-states were typically built around public spaces with temples often flanking their *agorai* and it was into this built reflection of the institutional landscape that inscriptions began to

appear on the walls of temples or as significant monuments in their own right.<sup>477</sup> Inscriptions therefore appear as both physical and linguistic expressions of Greek normative culture: appealing to the architectural, social and religious power of the *polis* through their monumental presence, and acknowledging the roots of their authority in their phraseology.

The first two clauses of the Dreros law invoke both the divine and community authorities sanctioning it. There is much uncertainty over the text and meaning of the word ὄλοιον in the first clause,<sup>478</sup> but the mention of θεός makes the religious overtones very clear and, given the inscription's location on a temple, it is very likely that the text is meant to be referring to same deity to whom the structure was dedicated.<sup>479</sup> The temple in question is usually identified as being dedicated to Apollo and this association of written laws with Apollo seems also to have existed right across the Greek world: in Gortyn where legal inscriptions also appear on walls of his temple, in Paros which seems to have kept an archive of laws in his temple, and in several other *poleis* which refer to him in legal inscriptions.<sup>480</sup> It is, moreover, very common for Greek legal inscriptions from a variety of regions and in a number of dialects to begin with invocations to the gods: many Athenian inscriptions appeal to *theoi* in their introductions<sup>481</sup> and a number of Gortynian texts simply begin with the word θεῖοι,<sup>482</sup> while inscriptions from fifth century Gortyn and fourth century Orchomenus invoke both θεός and τύχα ἀγαθ[ά] 'good luck'.<sup>483</sup> Two normative inscriptions from Teos<sup>484</sup> and a law from Lokris<sup>485</sup> also include curses explicitly calling on divine aid to prevent anyone flouting or overturning their provisions suggesting further efforts to harness divine power in support of the *polis*' laws.

---

<sup>477</sup> Crielaard, J. P. (2009, pp. 351-52, 365-66), Thomas, R. (2005, p. 43; 1996, pp. 27-29), Gagarin, M. (2005, pp. 91-93; 2004, p. 177), Perlman, P. J. (2004, pp. 182-93; 2000, pp.60-61), Osborne, R. (1999, pp. 346-47), Hölkeskamp, K.-J. (1992, pp. 72-73)

<sup>478</sup> Gagarin, M. & Perlman, P. J. (2016, p.202)

<sup>479</sup> Gagarin, M. & Perlman, P. J. (2016, pp.197-98), Papakonstantinou, Z. (2008, p.54)

<sup>480</sup> Gagarin, M. (2008, p. 122; 2004, p. 117), Perlman, P. J. (2000, pp.60-62, 67-77; 2004, pp.182, 189-95) Arnaoutoglou (1998, pp. 101, 110-111, 114-5) presents a number of legal inscriptions which make specific reference to Apollo (*SEG* 42.785, *Nomima* I.44 = *IG* ix 1<sup>2</sup> 609, *SEG* 33.679), and Hölkeskamp (1992, p.52) also points to evidence of an association between lawgiver legends and Apollo (cf. *Plu. Sol.* 4.1, *Lyc.*6, *Moralia* 146b-d)

<sup>481</sup> *ML* 46, 64, 69, 77, 89, 90, *IG* ii2 6, 23, 107, 108, 111, 113, 116, 119, 129, 135, 136, 140, 142 Harris, E. M. (2004, p.28)

<sup>482</sup> *GP* G43, G48, G51, G64, G65, G72, G78, G80

<sup>483</sup> *IC* IV 64, *IG* V,2 343 van Effenterre, H.; Ruzé, F. (1994, pp.50-52), Buck, C. D. (1955, p. 205)

<sup>484</sup> Appendix 3 §9 Arnaoutoglou, I. (1998, pp. xvii-xviii, 84-86) *ML* 30, *Nomima* I 104-105

<sup>485</sup> Appendix 3 §3



The second clause of the Dreros text explains that the πόλις enacted the legislation, with the aorist form of the impersonal verb ἔφαδε which appears to indicate that a decree has been agreed by an official or civic authority, and is found in this context in numerous inscriptions across Crete including three of the other inscriptions from the same site.<sup>486</sup> In the enactment clauses of the other Drierian texts, this verb is accompanied by references to what appear to be different legislative bodies (πόλις appears in one and the others mention what may be interpreted as ἰθύνται and ἑταιρεία respectively).<sup>487</sup> The word divider at the end of the enactment clauses of three of the four inscriptions distinguishes these declarations of authority from the main legislation.<sup>488</sup> The final clause of the Dreros inscription appears to suggest that both an individual official, the κόσμος, and representative bodies, the δάμιοι ‘those of the people’ and ἱκατι ‘the twenty’ were involved in the ratification of the law as ὀμόται ‘swearers’.<sup>489</sup> This suggests a tiered hierarchy of legislative bodies, with individual officials holding overall responsibility for specific tasks, a small group below or alongside them and some kind of popular assembly. Moreover, their position as representatives of the community as a whole is made clear by the clarification ‘those of the *polis*’, implying that at least the last of these groups and perhaps all three may have been the source of the *polis*’ approval mentioned in the enactment clause. This effort at community involvement in Dreros is also reflected in the location of the inscriptions themselves, generally accepted to have formed part of the East wall of a temple identified with Apollo overlooking the *agora*.<sup>490</sup> As such, these early legal inscriptions would have been visible to all on a regular basis, impressing on its citizens their shared ownership of and submission to the terms of the law,

---

<sup>486</sup> The verb is used in nine (*GP* Da1A, Dr1-5, G78, Lyktos 1A and 1B) Cretan inscriptions but there is, however, no indication of how this decision was made in Dreros. A 5<sup>th</sup> century Gortynian inscription (*GP* G78) does qualify it with *psapidonsi* (by voting-pebble) though this could indicate either the normal means of passing legislation or be a sign that voting was an unusual means of doing this. (Gagarin, M. & Perlman, P. J. 2016, p.204) Similar enactment formulas can be seen in the Attic-Ionic use of *edoxen* (cf. *IG* I<sup>3</sup> 1 and 104, *Nomima* 1.35, 41 and 84 (1.18)) and the Elean phrase *wratra* (cf. *Nomima* 1. 21, 23, 51, 52)

<sup>487</sup> Perlman, P. J. (2004, p. 188), van Effenterre, H. (1946, pp. 597-8, 600)

<sup>488</sup> Perlman, P. J. (2004, p. 192)

<sup>489</sup> Gagarin, M. (2008, p. 66), Papakonstantinou, Z. (2008, p. 55)

<sup>490</sup> Gagarin, M. (2008, pp.76-79), Gagarin, M. & Perlman, P. J. (2016, pp.197-200) The *agora* at Dreros is one of the earliest examples in the archaeological record, suggesting that this community was quick to reflect the importance of such civic gatherings in its architecture. Dating from the 8<sup>th</sup> century, it comprises a demarcated open area adjoining a temple, thus incorporating the combination of civic and religious found in the *agorai* described in Homer and reinforcing the importance of these two types of authority in this community. van Effenterre, H. (1937, pp. 10-11), Hölkeskamp, K-J. (1992, pp. 72-3), Thomas, R. (2005, p. 43), cf. *Il.11.807-8 see pp.46-51*

especially when engaged in public debates, both political and legal.

The emphasis on community and the cooperation of all these bodies in the enactment and application of legislation is also evident in the texts of other laws. A number of Greek *poleis* refer to community bodies working alongside officials and councils using ethnic designations like the Elean formulaic enactment clause *a wratra toir Waleiois* (according to the decree of the Eleans),<sup>491</sup> or civic entities like the *polis* or *dēmos*<sup>492</sup> that we see in Dreros.<sup>493</sup> This public affirmation of authority suggests that the approval of various groups representing the community as a whole was a necessary part of the validation of legislation. Moreover, threats against those overturning the law are not confined to the religious, with texts from Lokris<sup>494</sup> and Halikarnassos<sup>495</sup> including property confiscations, exile and, in the case of the Halikarnassian text, the possibility of being sold into slavery and reminders of the freedom citizens enjoy under the law.

The level of detail given in enactment clauses varies considerably between *poleis* and this may reveal some interesting information about their production and use. The 5<sup>th</sup> century Gortynian ‘Great Code’ is introduced simply with the word *θίοι* ‘gods’, and contains no details of the enactment process, perhaps because it had no need of additional authorisation or because such information was communicated in other ways. In other communities, especially as the volume of written legislation grew, more detail appears to have been used to fit laws into a wider context. The text from Halikarnassos<sup>496</sup> mentioned above has a prescript that runs to eight lines and details not only under which body the law was passed, but also mentions that the assemblies (*sullogoi*) of two *poleis* (*that of the Halikarnassians and of the Salamakassians*) were involved in ratifying it, the precise date, and the names of specific individuals who passed and witnessed it.

τάδε ὁ σύλλο[γ]ος ἐβόλεύσατο  
ὁ Ἀλικαρνατέ[ω]ν καὶ Σαλαμακι-

*These things did the sullogos (assembly) decree,  
that of the Halikarnassians and of the*

---

<sup>491</sup> *Nomima* 1.51 (from Elis but also refers to *tos Anaitos kai tos Metapios* suggesting that this legislation was multi-lateral between the three *poleis*), 52

<sup>492</sup> Cf. *Nomima* 1.6

<sup>493</sup> Gagarin, M. (2008, p. 85), Papakonstantinou, Z. (2008, pp. 52-56, 93-96)

<sup>494</sup> Appendix 3 §3 ll.9-17 *see pp.162-65*

<sup>495</sup> Appendix 3 §4 ll.32ff. *see pp.165-68*

<sup>496</sup> Appendix 3 §4

τέων καὶ Λύγδαμις ἐν τῇ ἱερῇ[ι]  
 ἀγορῇ, μῆνος Ἑρμαιῶνος πέμ-  
 5 πτη ἱσταμένο, ἐπὶ Λέοντος πρυ-  
 ταν[εὔον]τος τοῦ Ὀατάτιος κα-  
 [ι] Σα[ρυτ]ῶλλο τοῦ Θεκούλω νε-  
 [ωπ]οί[ο, πρ]ὸς μνήμονας·

*Salamakissians, and Lygdamis in the sacred  
 agora on the fifth day of the month of Hermaion  
 erected them at the time when Leon son of  
 Oassassis was prytanis (elder) and Sarytollos of  
 Thekuilas was neopoios (a political office)  
 before (or perhaps 'regarding') the mnemones*

This level of detail may have served an important symbolic function in underlining the authority behind the law in both the *poleis* to which it applied, using highly formalised diction to emphasise that the correct process had been followed to get the law passed. The naming of officials, the reference to those witnessing the enactment and the inclusion of the date would have recalled the occasion of these laws being passed and inscribed,<sup>497</sup> just as the use of very permanent material and erection of an impressive structure may have monumentalised and immortalised the law for future generations.<sup>498</sup>

There may also have been practical reasons for the details we find here: in other texts we find the practice of naming individuals in itself associated with efforts to establish the time period in which the decree was passed and this would certainly have helped members of a society not accustomed to precise numerical dating to recall the year when a certain individual held office.<sup>499</sup> Such a system for determining the date would have made it possible to establish whether a law was in force at the time an action was performed, while the places involved may indicate the jurisdictions to which the law applies and the naming of individual officials might add weight to the legislation, by confirming that due process had been followed.<sup>500</sup> This would have made it far easier to establish how the laws and their amendments interact and shows that legislators were conscious of the need to create laws which were economical, but which also fitted into a wider and evolving set of rules and

<sup>497</sup> Ostwald, M. (1986, pp.87-94)

<sup>498</sup> Lanni, A. (2016, pp.79-83), Papakonstantinou, Z. (2008, p. 74), Thomas, R. (1996, pp. 26-27)

<sup>499</sup> Thomas, R. (1992, p. 67)

<sup>500</sup> Giving the source of the law and defining the time it was enacted, may even have helped in holding officials accountable and repealing their laws if they were later found to be unjust or contradicted earlier legislation. Ostwald, M. (1986, pp.88-93), Thomas, R. (1992, pp.144-46), Hölkeskamp, K-J. (1992, p.58), Canevaro, M. (2016), Kapparis, K. (2019, pp.36-40)

norms. Some early legislators, like those at Gortyn and Lokris<sup>501</sup> even seem to have found it useful to make reference to different pieces of legislation or remark on whether they can be applied retroactively, and also seem to have added clauses clarifying key difficulties after the original inscription.

In the case of the inscription from Halikarnassos, further complexity arises from two additional details. The mention of Lygdamis who seems to have been a local ruler, probably operating on behalf of the Persians who were the dominant power in the region,<sup>502</sup> also suggests that even despots needed at least to seem like they were appealing to the populace for authority. This suggests that regardless of a *polis*' political system, there was a strong and widespread cultural importance attached to popular involvement in the law throughout the Greek world. Moreover, the fact that the procedures that follow seem to have been ratified by two *poleis* suggests that this was part of a legal relationship between them and thus may well have benefitted from fitting into the rules, customs and institutions of both.<sup>503</sup> As cities and their territories expanded, wars and alliances, colonisations and occupations made it necessary for treaties to be struck involving multiple communities which used much the same normative language and drew on the same sources of authority as other forms of legislation.<sup>504</sup> Furthermore, while it is probable that colonial settlers would have adopted the norms of their mother city when making their own constitutions,<sup>505</sup> continued relations between colonists and their ancestral lands meant that further agreements would need to be made between them.<sup>506</sup> It is therefore not uncommon for such bilateral legislation to appear in Greek inscriptions, especially when treaties were being made or in the agreements between *poleis*.<sup>507</sup>

The use of prescripts to root the earliest laws in both religious and civic sources of authority appears to draw on many of the same imperatives behind Homeric and Hesiodic

---

<sup>501</sup> See Appendix 3 §6 & §3 *see pp.176-79, 235-39*

<sup>502</sup> There is much debate about who the Lygdamis of the inscription is, as he may have been the same tyrant that sent Herodotus into exile. Meiggs, R. & Lewis, D. (1969, pp. 71-72), Arnaoutoglou, I. (1998, p. 109), van Effenterre, H. & Ruzé, F. (1994, p.92)

<sup>503</sup> Papakonstantinou, Z. (2008, pp. 57-58)

<sup>504</sup> Cf. *Nomima* 1.50-60

<sup>505</sup> Gagarin, M. (1986, pp. 129-30)

<sup>506</sup> An example of this is in a Lokrian text (*ML* 20) detailing the status of Eastern Lokrian colonists of Naupaktus, addressing issues of taxation, emigration and inheritance of property. Meiggs, R. & Lewis, D. (1969, pp. 35-40)

<sup>507</sup> Lokris in particular seems to have been very active in setting up colonies and the inscription in Appendix 3 §3 refers to two unknown territories, Hylia and Liskaria, which may have been conquered, colonised, or both. Arnaoutoglou, I. (1998, p.110 n.35)

oaths and *gnōmai*. It is likely that, as is suggested by the term *omotai* ('swearers') in the Dreros inscription that the performance of oaths was involved in the ratification of law and it is therefore natural that similarly formulaic expressions of divine sanction should be employed to protect written inscriptions.<sup>508</sup> We also see the use of prescripts and linguistic formulas to provide a civic basis for the enactment of laws across the Greek world, suggesting a legal culture firmly rooted in the communal forum of the *agora*. Moreover, as we shall see, the Homeric and Hesiodic diction of oaths and collections of norms also seems to have formed a linguistic basis for formulating complex rules and legal compilations suggesting that the earliest Greek lawmakers drew not only on some shared principles of divine authority and community sanction, but also on a sophisticated spoken normative language that was readily employed in the composition of written law.

## II. Rules and Provisions: The Language of Law

When analysing the language of Greek legal inscriptions, a set of distinct forms of legislation emerge, with particular formulations and compositional techniques which create a range of methods for articulating prescriptive rules, and mark texts out as normative in nature. Casuistic laws expressed with the indefinite or the conditional offer the linguistic flexibility to present both the consequences of breaking generalised hypothetical rules and of their applications in particular scenarios, while laws that take the form of commands can be used to set straightforward substantive rules, introduce procedures or address potential legal questions. When such clauses are combined in inscriptions, they give early Greek laws a varied texture and enable complex rules to be structured, producing detailed, sequential procedures that were physically durable, would have been easy to follow consistently, and could delineate provisions for different classes of people or specific circumstances.

As we saw in the previous chapter, these forms of words frequently appear in normative contexts in Archaic poetry, enabling individuals to impress expectations and consequences on addressees when offering advice, asserting their power, or appealing to their better nature. The use of similarly consistent, formal diction and the repetition of significant phrases in inscriptions would have given the laws displayed in this way a sense of authority, marking out their statements as laws and distinguishing them from other types of inscriptional writing. This

---

<sup>508</sup> Bolmarcich (2007, pp.26-27) has noted the similarities between legal oaths and the ones attested to in treaties and it is likely that the inscription of both laws and treaties rested on this shared normative foundation.

normative diction may also have helped to structure provisions so that they could be followed, whether on the stele or read aloud, making use of formulaic associations to aid in the navigation of the law, through the repetition of key terms and the use of casuistic language to mark clearly the starts and ends of provisions. This language also facilitated the construction of complex rules by allowing sequences of clauses and sub-clauses to be organised into syntactical layers, often demarcated by different combinations of indefinites and conditionals alongside the varied use of particles. The similarity of such structures to those that appear in Homeric formal agreements and imprecations, and Hesiod's collections of *gnōmai* suggests that such language was not only a useful and important part of the oral communication of correct behaviour, terms of agreements and establishment of power, but that this diction also formed the basis for the ways in which written legal texts were composed and differentiated from other types of inscriptions.

### Casuistic laws

One of the most distinctive features of Greek legal provisions is their use of casuistic syntax to set out the consequences of hypothetical actions, detailing situations which could occur and prescribing outcomes should those circumstances arise.<sup>509</sup> Such clauses may easily be distinguished by their use of conditionals<sup>510</sup> and indefinites, setting out a hypothetical protasis before stipulating what should be done if that situation occurs. Like the *gnōmai* and promissory oaths of Homer and Hesiod, such provisions can be arranged into syntactical layers with overarching provisions followed by sequences of sub-clauses, often differentiated by the use of connective particles, to enable complex procedures or collections of rules to be built up.

This use of language to set out complex procedures can be seen in the legislation in the Dreros text which is introduced by an overarching indefinite construction, indicating the circumstances under which the law applies, 'ἐπεὶ κα κοσμήσει,' 'whenever someone has been *kosmos*', followed by the main provision 'δέκα φετίον τὸν ἄ-φτὸν | μὴ κόσμεν' 'let him not be *kosmos* within ten years' expressed as a command using the jussive infinitive phrase μὴ κόσμεν. There is then a conditional 'αἰ δὲ κοσμησίε' 'if he serves as *kosmos*' with a list of apodoses detailing the consequences should anyone break this law.<sup>511</sup> This structure is

---

<sup>509</sup> Gagarin, M. (2008, pp. 49)

<sup>510</sup> Gagarin, M. (1986, p. 53)

<sup>511</sup> Cf. the use of several apodoses stemming from a single protasis in Homeric *gnōmai* pp.114-16

reinforced by the use of the particle ‘δὲ’ in ‘αἱ δὲ κοσμησίε,’ to indicate that the conditional is a subsection of the first decree which has no connecting particle: a pattern which has also been observed in inscriptions elsewhere in Dreros and on the rest of Crete.<sup>512</sup> The indefinite can therefore be used to create an overarching statement that emphasises the universality of the law, while the conditional is used to address the specific eventuality of infringement and its consequences.

We also find the indefinite embedded in each of the three penalties of the conditional sub-clause to indicate the extent of an illegitimate *kosmos*’ liability each accompanied by a jussive infinitive setting out how each one is to be resolved.<sup>513</sup> This makes it clear that it is not only forbidden that a *kosmos* should serve again within ten years, but that it is also not in his interests to do so as any decisions he makes will be overturned, he will owe double in compensation any payments he has handed down and will never be *kosmos* again as long as he lives. This ability to set out consequences and define their extent, supports the main provision by making it abundantly clear how infringements will be handled, reversing his earlier actions, enabling the calculation of recompense and providing forbidding restrictions on his right to take office in the future. We also find some interesting variations in the syntax, with the second penalty laying emphasis on the permanence of the prohibition against holding office by leading with the jussive infinitive and concluding with the statement of extent (ἄς δόοι, ‘as long as he lives’), while the other two open with the indefinite and conclude with the jussive imperative.

These forms of casuistic expression with their ability to present general rules, the consequences of infringements and exceptions can be compiled to create sequences of rules that can be followed even as procedures become more complex. The best example of this is the so-called ‘Great Code’, a 5<sup>th</sup> century inscription spanning 12 *stelai* that bounded the *agora* of the Cretan *polis* of Gortyn.<sup>514</sup> The text begins with an indefinite construction forbidding the seizure of an individual before the case is brought to trial, followed by casuistic clauses dealing with an escalating series of infractions. Subsequent new pieces of legislation are introduced with conditionals marked as separate provisions, visually by spaces, but also verbally through asyndeton.<sup>515</sup>

---

<sup>512</sup> Gagarin, M. (2008, pp. 48-50) Cf. Also the oath in *Iliad* 3 see pp.120-24

<sup>513</sup> ὁ[π]ε δικακσίε... ἄς δόοι and κῶτι κοσμησίε

<sup>514</sup> *IC* IV 72 I.1-II.2, See Appendix 3 §5

<sup>515</sup> Gagarin, M. (2008, p. 123), Kristensen, K. R. (2008, p.3)

θίοι. Ὅς κ' ἐλευθέροι ἔ δόλοι μέλλει ἀνπιμολέν, πρὸ δίκας μὲ ἄγεν. αἱ δὲ κ' ἄγει καταδικασάτο το ἐλευθέρο δέκα στατερανς, το δόλο πέντε ὅτι ἄγει, καὶ δικασάτο λαγάσαι ἐν ταῖς τρισὶ ἀμέραις. αἱ [δέ] κα μὲ [λαγ]άσει, καταδικαδδέτο το μὲν ἐλεθέρο στατῆρα, το δόλο [δα]ρκνὰν τᾶς ἀμέρας φεκάστας, πρὶν κα λαγάσει· το δὲ κρόνο τὸν δι[κ]αστὰν ὀμνύοντα κρίνεν.

*Gods! Whosoever may be likely to bring a suit in relation to a free man or a slave is not to seize him before trial. But if he make a seizure, let [the judge] condemn him to [a fine of] ten staters for a free man, five for a slave of whoever he seizes and let him judge that he release him within three days; but if he does not release him, let [the judge] condemn him to [a fine of] a stater for a free man and a drachma for a slave for each day until he does release him, and the judge must judge on oath as to the time.*

Just as in the Dreros inscription discussed above, the indefinite introduced in this case by ‘Ὅς κ’ ‘whoever’ opens the text and appears to provide the subject for many of the subsequent clauses, the ‘whoever’ being the principal actor in the ‘if’ clauses that come thereafter. The introductory indefinite therefore appears to create syntactical unity for the entire section, by emphasising that the initial law applies to anyone. Most of the subsequent clauses and sub-clauses take the form of a conditional with a protasis giving a possible situation introduced by ‘αἱ κα’ or ‘αἱ δὲ κα’ and an apodosis detailing a course of judicial action generally given with either the third person imperative or the jussive infinitive.<sup>516</sup> The level of complexity and detail of this legislation shows clearly the formulaic incorporation of the particle ‘δέ’ in the frequent repetition of the phrase ‘αἱ δὲ κα’ ‘and if’ to denote subsections of pieces of legislation, which add details of the ways in which the main provisions, distinguished by their lack of connecting particles,<sup>517</sup> can be infringed or varied in different circumstances.

The use of particles to differentiate subclauses from overarching provisions provides the text with a formulaic clarity and prescribes straightforward courses of action for a variety of different eventualities creating a sort of syntactical ‘flow-chart’ for identifying the

---

<sup>516</sup> Sealey, R. (1994, p. 43)

<sup>517</sup> Gagarin, M. (1982, pp. 129-37; 2008, pp. 46-58)



penalties for disputes depending on the stage they have reached:

*But if he make a seizure, let [the judge] condemn him to [a fine of] ten staters for a free man, five for a slave of whoever he seizes and let him judge that he release him within three days;*

*But if he does not release him, let [the judge] condemn him to [a fine of] a stater for a free man and a drachma for a slave for each day until he does release him.*

Here, the second negative conditional describes the penalty for failure to comply with the previous one which is itself a provision for breaking the main prohibition against seizing an individual without first taking him before a court.<sup>518</sup> This provides both escalating disincentives for those who would not behave in accordance with the law and also gives clear procedures for plaintiffs to invoke and for magistrates to apply.

Moreover, the use of *μὲν* and *δὲ* in this section also shows how simple syntactical devices can be used to delineate how the law may be applied to different classes of person, with *μὲν* differentiating sub-clauses addressing penalties based on status from the procedure as a whole:

καταδικαδδέτο το μὲν ἐλεθέρο στατεῖρα, το δόλο [δα]ρκνὰν τᾶς ἀμέρας φεκάστας

*let [the judge] condemn him to [a fine of] a stater for a free man and a drachma for a slave for each day until he does release him,*

This suggests that *μὲν* and *δὲ* can be used to add and distinguish more layers of legislation within the apodosis which nuance the consequences of legal actions depending on those performing them.<sup>519</sup>

---

<sup>518</sup> This type of variation can also be seen where further details need to be added if a circumstance exists where a provision might not produce an acceptable outcome. For instance, the protection clause in the 5<sup>th</sup> century law from Halikarnassos mentioned above (Appendix 3 §4 ll.32-41) uses a condition with the indefinite pronoun (*ἤν δὲ τις*) to prescribe the sale and consecration of all the property of anyone who wishes to overturn the law, but if it is not (*ἤν δὲ μῆ*) worth ten staters, he is to be sold into slavery.

<sup>519</sup> Cf. Similar use of particles in the oath in *Iliad* 3 where *μὲν* and *δὲ* are used to distinguish the outcomes of different winners in the duel *see pp.120-24*

This level of syntactical structuring marked by particles can be seen throughout the code where new pieces of legislation are most often introduced with the phrase ‘αὶ κα’, without ‘δέ’ and often have a space between them and the previous section, which, as Gagarin suggests, would make it easier to distinguish an overarching piece of legislation from these more specific details.<sup>520</sup> New general provisions also often begin by specifying classes of person by referring to particular subjects, first at the end of column II with ‘αὶ κ’ἀνερ’ ‘if a man...’ (Col. II 45), then a number of times subsequently, such as ‘αὶ τεκοὶ γυνά’ ‘if a woman gives birth...’ (Col. III 44) and ‘ἐ κ’ἀποθάνει ἀνὲρ ἢ γυνά’ ‘when a man or woman dies...’ (Col. V 9-10). One section of legislation (Col. IX 43) begins with the indefinite conditional αὶ τίς κα ‘if anyone’, but it seems to be far more common for the indefinite pronoun to appear in subclauses introduced with αὶ δέ τίς distinguishing rules that apply to anyone from ones that specify particular individuals.<sup>521</sup> The reason behind these changes of subject is evidently to do with the law’s interest in differentiating the obligations and expectations of males, females, slaves and free, and it is the use of the conditional which confers the flexibility to do this.<sup>522</sup>

The combination of these syntactical features and the organisation of clauses into a system which addresses individual cases in the “Great Code” would have facilitated practical use with a verbal structure that demarcates different provisions. In several places this amounts to a series of coherent procedures, incorporating successive layers of detail into subclauses.<sup>523</sup> In the first section of the ‘code’ there are three distinct stages (1.2-14 when a seizure is made, 15-24 when a dispute arises about the status of someone which may render the seizure lawful if he/she is a slave, 24-39, failure by the loser of the case to comply) with increasingly severe fines the longer the ruling of the court is not adhered to. The casuistic structure of each provision facilitates this by falling into a logical pattern of escalation as the case progresses and the initial defendant continues to refuse to free his captive.<sup>524</sup>

---

<sup>520</sup> Gagarin, M. (1982, pp. 129-37; 2008, pp. 46-58)

<sup>521</sup> Cf. Col. VI 12-13, 37, VIII 53, X 20, 29-30. This is similar to Homeric and Hesiodic *gnōmai* that use *anēr*, *gynē* or *basileus* to specify particular groups that a rule might apply to and is also a key feature of Near Eastern Laws. See pp.110, 116, 126

<sup>522</sup> The same can be seen in another text from the *polis* of Gortyn where several separate laws are inscribed on the same stele, but the use of different subjects in two conditional clauses describing the same offence (IC IV 43 col. A, a1, αὶ κ’ ἄλος ἐνεκ[υρακ]σανς ‘if someone has suffered an injustice...’ and col. A. b1, αὶ δολον ε δολαν ἐνεκυρακσει ‘if a male or female slave suffers injustice...’) indicates the different legal status of the actors specified.

<sup>523</sup> Gagarin, M. (2008, pp. 159-62)

<sup>524</sup> Cf. The oath in *Iliad* 3 which details different outcomes in the events of Menelaus winning, and the failure of the Trojans to comply if Paris is killed see pp.120-24

The ability to differentiate penalties could also be used to mark out mitigating or aggravating characteristics and the influence these might have on the prescribed sentence. While most Greek legislation is particularly concerned with setting procedures, rules of this type also demonstrate an implicit substantive understanding of the relative seriousness of different offences. Hints of this can be seen in a fragmentary 5<sup>th</sup> century inscription from Eltynia<sup>525</sup> which appears to address penalties for affray, using casuistic diction to differentiate the severity of the injuries caused:

αἰ δέ κα κηρί τροόσει ἀποτ[ει]σεῖ πέντε δαρκν[άς]· αἰ δὲ κή<ς> ῥινὸς αἷμα ῥυῆι<sup>526</sup>

*But if he should wound with his hand he shall be fined five drachmas; and if blood should flow from his nose –*

The text also makes provision for the different sides in an affray, using the conditional protasis to specify that the one responsible for starting a fight should pay:

αἶ κ' ἄρκει μάκας ἀποτεισεῖ δέκα δαρκνὰς ὅπε κ' ἄρκε[ι-]<sup>527</sup>

*If he should initiate a fight he shall be fined ten drachmas whenever he should start –*

It is unclear whether the indefinite at the end of this line is following on from the apodosis, clarifying that the penalty shall be applied on every occasion that an individual incited violence, or if it is the protasis of a sub-clause that offers penological details for each such incident. However, we do see examples of indefinites used to show the universality of the apodosis in lines 9 and 10 of the inscription, demonstrating the significance of this structure in emphasising that every single offence will incur the fine cumulatively:

[-τρο]ό[σε]ι (?) ἀποτεισεῖ πέντε δαρκνὰς ὅ[πε ν]ίν κα παῖσει. |α[ῖ] κα ἰ[-]

[-]ι ἢ παῖσει ἀποτει[σ]εῖ |[πέ]ντε δαρκνὰς ὀθά[κι]ς [κα π]αίσει[ι] |η[-]<sup>528</sup>

*- he should wound (?) he shall be fined five drachmas whenever he might strike him.*

*And if –*

<sup>525</sup> GP Elt 2, Appendix 3 §7

<sup>526</sup> l.1

<sup>527</sup> l.2

<sup>528</sup> ll.9-10

- or he should strike, he shall be fined five drachmas however often he strikes him –

Conversely, the extent of the application of the legislation can be more limited, with particular categories of person being named and specific details being listed using the particles ἤν or ἤ:

[αἰ] δέ κ' ἀ[ν]ήρ | τὸν πηῖσκον παίηι | μὴ [-]  
[-]τον | ἤν ἀνδρηῖοι | ἤν ἀγ[έ]λα[ι] | ἤ(ν) συν[β]ολήτραι | ἤ 'πι κοροῖ | ἤ 'πι [...]ο[...]η[-]  
[-] αἰ δέ κ' ἀγέ[λ]α[ος] | τὸν πηῖσκον | ὄνη[ται (?)] ἃ ἤγγραται | αἰ ἐς καιρὸν η[-]<sup>529</sup>  
*and if a man should strike a pēiskos, let (him?) not-*  
*- or in the andreion, or in the agela or in the synbolētra, or at the dance, or at –*  
*- and if an agelaos (?) the pēiskos what is written, if it is appropriate –*

The text clearly recognises that the law requires nuance when considering its application between the status-categories of *anēr*, *pēiskos* and *agelaos*, which Gagarin and Perlman plausibly connect with different age groups,<sup>530</sup> using the conditional to help specify who is seen as committing the offence, and whether to penalise or exempt them. Line 6 also lists a number of specific locations where an action is imagined to occur to show the range of places where the provision is meant to apply.

The casuistic structure of the text can also be used to specify how the procedure applies to different parties in the incident, absolving someone who acts in self-defence, using the participle both to identify the mitigating circumstance in the protasis and to demarcate an individual who satisfies the condition as exempt from the penalties in the apodosis:

αἰ δέ κ' ἀλεκσόμενος [πα]ίηι ἄνατον ἤμεν τοῖ ἀλεκσο[μένοι-]<sup>531</sup>  
*But if he should strike in self-defence, the one defending himself shall be not liable –*

Likewise, the aorist participle is used to denote the one who is liable in line 5:

[-τιμ]ᾶν (?) | κατιστάμεν | τὸν τροσσ[άν]τον.<sup>532</sup>

---

<sup>529</sup> II.5-7

<sup>530</sup> Gagarin, M. & Perlman, P. J. (2016, p.258)

<sup>531</sup> 1.4

<sup>532</sup> 1.5

- *The person wounding shall pay the fine;*

This ability to differentiate the parties in the generalised rules surrounding a dispute demonstrates the way that casuistic syntax can be used to authorise or empower, creating secondary ‘rules of recognition’.<sup>533</sup> Gortyn’s laws on adoption, for instance, provide procedures that empower those wishing to make or annul adoptions. The procedure for annulment contains several stages enabling the formalisation and publication of the arrangement:

	αἰ δ[έ κα]	
	[λεῖ] ὁ ἀνπανάμενος, ἀποφειπ-	<i>And if the adopter wishes, let him</i>
	ἀθθο̅ κατ’ ἀγορὰν ἀπὸ τοῦ λά[ο̅ ὄ]	<i>rescind the adoption before the agora</i>
	[ἀπα]γορεύοντι καταφελμέν-	<i>when the citizens are gathered from the</i>
	ο̅ν τοῦν πολιατᾶν· ἀνθέμε̅[ν δὲ]	<i>stone for speaking in assembly. And let</i>
15	[δέκ]α [σ]τατῆρανς ἐδ̅ δικαστ-	<i>him place 10 staters in the court which the</i>
	ε̅ριον, ὁ δὲ μνάμο̅ν ὁ τοῦ κσε̅ν-	<i>mnēmon will give to the one renounced.</i>
	ίο̅ ἀποδότο̅ τοῖ ἀπορρε̅θέντι.	

By providing a clear protocol that is easy to follow and includes mechanisms for ensuring that the act is publicly acknowledged and for compensating a party who might otherwise feel aggrieved, the law allows an individual to perform legally binding actions. Conversely, the law forbidding seizure before a trial implies that there was the potential to appeal to a court for the right to seize an individual to seek recompense. The existence of such procedures whether explicitly or implicitly described in legal texts highlights the importance of this positive, empowering role of casuistic law.

This feature of Greek legal language is especially important in cases of homicide, where the prosecution of the case falls to the victim’s closest relatives, and inheritance, where the order of succession needs to be established.<sup>534</sup> The surviving fragment of Drakon’s re-published Athenian law on Homicide takes the form of a series of conditionals introduced by ἐὰν using the subjunctive, with instructions in the apodoses expressed by jussive infinitives.

<sup>533</sup> Hart, H. L. A. (1961, pp.94-99)

<sup>534</sup> Cf. *IC IV 72.4.23-5.54*, Gagarin, M. (2008, pp.163-64) Davies, J. K. (1996, p.44) *see pp.218-23*

This pattern is repeated throughout the inscription as successive layers of complexity are added, especially in the clauses detailing how an offender might be pardoned:

[αιδέσασθαι δ' ἑὰμ μὲν πατέρ]ρ εἶ-  
 ι ἔ ἀδελφὸ[ς] ἔ ἠνεξ, ἡάπαντ[α]ς, ἔ τὸν κο[λύοντα κρατέν· ἔὰν δὲ μὲ] ἠοῦ-  
 τοι οσι, μέγρ' ἀνεφ[σι]ότετος καὶ [ἀνεφσιῶ, ἔὰν ἡάπαντες αἰδέσ]ασ-  
 θαι ἔθέλοσι, τὸν κο[λύ]οντα [κ]ρα[τέν· ἔὰν δὲ τούτον μεδὲ ἠεξ ει, κτ]ἔ-  
 νει δὲ ἄκο[ν], γνοσι δὲ ἠοι [πε]ντ[έκοντα καὶ ἠεξ ἠοι ἔφέται ἄκοντ]α  
 κτέναι, ἔσἔθ[ο]ν δὲ ἠ [οι φ]ρ[άτορες ἔὰν ἔθέλοσι δέκα·

*And if his father is alive, or brothers or sons, they may grant reconciliation/forgiveness, unanimously, or one who objects shall prevail. And if there are none of these, [the right shall extend] as far as the degree of cousin, and the cousins may grant reconciliation if they all wish, but one who objects shall prevail. And if none of these exists and he killed unwillingly, and the fifty-one Ephetai deem it unwilling homicide, let ten members of the phratry admit him if they wish to.*

The initial condition presents a list of individuals who have to give unanimous consent for pardon to be granted, using the formula τὸν κολύοντα κρατέν to give the right of veto to anyone who does not wish to show clemency. The second negative condition passes the right of pardon down to those relatives deemed to be equivalent to cousins if the victim has no relatives in the previous category, with the formula τὸν κολύοντα κρατέν again used to allow any one of these to block a reprieve, before a third conditional implies that the *Ephetai* and representatives of the victim's phratry will be allowed to exonerate a man guilty of involuntary homicide if the deceased has no living relatives. Thus, the use of these formulas and the casuistic diction enable a clear procedure to emerge, conferring powers on successive groups to decide on whether the sentence should be carried out.<sup>535</sup>

### **Law as Commands**

Alongside casuistic rules, we also see laws expressed as simple commands which are

---

<sup>535</sup> Likewise, inheritance provisions from both 6<sup>th</sup> century Lokris (Appendix 3 §3 ll.3-6 see pp. 162-65) and 5<sup>th</sup> century Gortyn (JC IV 72 IV.23-V.28 Gagarin, M. (2008, pp. 163-64)) use conditionals with the negative particle μή to create the same sort of 'flow-chart' logic to legally fix who the closest relatives are.

often used in places where a general rule is laid out or where there is simply no space for debate or variation. As such, they often fulfil the same sort of function as the apodoses of casuistic rules, conferring powers and prescribing or prohibiting certain behaviours and use very similar syntax. Their nature also means that they are particularly forcefully applied at the beginnings and ends of inscriptions or passages of legislation, often giving main provisions or conferring authority on the laws and the institutions tasked with applying them. As we shall see, texts can open with commands to set out main provisions before clarifying details of how they are applied with casuistic rules.<sup>536</sup> They can also be used to conclude pieces of legislation, either to terminate sequences of casuistic laws or to indicate rules where no exceptions are permitted. Both of these functions can be clearly seen in the Gortynian Great Code where escalating procedures are given that need to have a clear end point or where additional details are required by specific legal questions.

The process of escalation in the Code's rules on unlawful seizure is concluded by giving the magistrate executive authority to settle matters of dispute with the formula τὸν δι[κ]αστὰν ὀμνύοντα κρίνεν 'the judge is to decide under oath', using the jussive infinitive to award this discretionary power.<sup>537</sup> The procedure therefore has, structurally and syntactically, a means of terminating itself similar to the authoritative statement declaring that the power to determine the guilt of those accused of homicide in Drakon's law rests with the *ephetai*:

τὸς δὲ ἐφέτας διαγν[ο]ν[α]ι.

*And let the Ephetai pass judgement.*

This type of straightforward order therefore empowers the officials involved by declaring who has the final say and thus enables them to settle disputes and prevent them from escalating indefinitely.

Legal commands often also appear among concluding statements in the Gortynian Great Code to clarify general principles which admit no exceptions. In the legislation on adoption, for example, we have the clarifying statement:<sup>538</sup>

---

<sup>536</sup> See the 6<sup>th</sup> century Lokrian text (Appendix 3 §2) and the 5<sup>th</sup> century Halikarnassian one (§4) *see pp. 165-68.*

<sup>537</sup> Appendix 3 §5 ll.11-12, 13-14, 38-39 Cf. a similar clause in the text from Eltynia - Appendix 3 §7 l.8)

<sup>538</sup> Gagarin, M. (2008, p. 167)

γυνὰ δὲ με ἀμπαινέθθο μεδ' | ἄνεβος.

*Let not a woman adopt, nor a minor.*

The simple prohibition με ἀμπαινέθθο indicates that there was no procedure for dealing with a woman or minor attempting to adopt someone. Adoption by women and minors was simply not permitted and issues of inheritance in the event of a woman being childless or a minor being the last surviving heir are addressed in the sections on heiresses (8.15-9.24) and heirs (4.23-5.54) respectively. Therefore this use of an order without any subsequent conditionals indicates its use where the law brooks no exceptions.

We can therefore see three main syntactical constructions in common use for expressing Greek laws, and which mark out a given inscription as 'legal'. Indefinites and indefinite conditionals address general principles, highlight contrasts between specific and general cases, and can also be used to express the effective extent of rules. Owing to their all-encompassing effect, indefinite constructions are particularly forcefully applied to introduce a piece of legislation's main rules before specific scenarios are addressed, to show the far-reaching consequences of a clause's apodosis or, as we shall see, to make generalised threats or incentives at the end of inscriptions to prevent anyone flouting or overturning legislation.<sup>539</sup> Conditionals are also able to address specific hypothetical cases or individuals and express clear expectations as to the rights and obligations a particular action entails. Their capacity to include more specific terms enables subtle differences and exceptions to be accounted for and the layering of successive casuistic terms, either standing as new rules, or adding procedural detail to earlier ones, can be used to produce logical, multi-stage procedures detailing rights, obligations or penalties. Finally commands in the third person imperative or jussive infinitive can be used to prescribe courses of action, establish clear general rules, clarify certain points of law or terminate procedures. Such commands can be used at the start of a legal passage to make an authoritative statement about what the law dictates in general before the detail of how it works in practice, at the end of a sequence of rules to declare authoritatively how a procedure should ultimately be settled, or can appear as simple substantive rules clarifying key points. These three syntactical forms enable considerable complexity to develop, by allowing the expression of multiple stages, and

---

<sup>539</sup> Cf. The Lokrian and Halikarnassian inscriptions discussed below (*see pp. 162-68*) (Appendix 3 §3 & §4). The threatening use of the indefinite can also be found in the 'Teos curses' *ML* 30 (Appendix 3 §9)



admission of exceptions, with clauses and sub-clauses of such rules which are often marked out by the use of connective particles, typically with asyndeton distinguishing a new main provision from subsequent sub-provisions.<sup>540</sup>

The similarity of these structures' organisation and usage to features found in earlier poetic discourse suggests that this legal vocabulary and syntax was already in use in spoken normative traditions before the appearance of written law and could be used to articulate the consequences of legal issues that might result in disputes and would ultimately become subjects of legislation.<sup>541</sup> As was argued in the previous chapter, the application of casuistic structures to *gnōmai*, promises and threats enables individuals giving advice in speeches or striking bargains to influence the behaviour of others by presenting them with more or less attractive alternatives. Moreover, the striking similarity of structure found in sections like the oath before Menelaus' and Paris' duel in *Iliad* 3 suggests that such spoken agreements could admit the type of formality and complexity we see in early Greek legal compilation texts, and that those making written laws were using the same subtle variations inherent in Greek normative language to give structural definition and prescribe procedures for different outcomes. The distribution of these formulations in legal inscriptions across the Greek world and their usage in earlier poetic traditions which were probably widely appreciated<sup>542</sup> means that they were sufficiently similar to normative traditions of different regions of Greece that allowed for variations in customs, practices and norms between *poleis*, but were nevertheless recognisable between different communities.

---

<sup>540</sup> Perlman, P. J. (2004, p. 186), Davies, J. K. (1996, pp. 36-7), Gagarin, M. (1981, p.154; 1982, pp. 129-32; 2008, p.49)

<sup>541</sup> Cf. The different consequences of homicide described in *Il*.9.632-36, *Od*.3.196-98 and 23.118-20, of dishonouring one's mother in *Od*.2.132-37. We also find customary norms articulated in this way such as Penelope's assertion of how a woman should be courted at home in *Od*.18.276-80 and, while he doesn't give the human consequences we might expect from law, the list of offences against another's *oikos* in *Op*.320-34 includes a number of crimes that were recognised in later legislation such as theft, fraud, adultery and dishonouring one's parents. Roth (1976, pp.334-36) has argued that the form of *Op*.707-13 is indicative of how oral law-codes might have been composed and, while this thesis does not go as far as to posit the existence of such fixed traditional compilations, the utility of the language in forming such collections of rules does suggest a normative culture capable of articulating complex and multi-stage oral laws when the need arose.

<sup>542</sup> Sealey, R. (1994, pp. 138-44), Gagarin, M. (1981, pp. 5-19), Carey, C. (2013, pp. 4-10)

### III. The Composition of Inscriptions

#### The combination of casuistic and command-type laws

The different phrases found in Greek legal texts with their ranges of applications can be combined to give laws structural and syntactical definition addressing a variety of different types of rules and variations. This feature of normative language can already be seen in the oaths and collections of *gnōmai* in Homer and Hesiod; however, the capacity for written inscriptions to record greater levels of detail permanently that could accrue over time, enabled the production of rules with a more varied texture and greater nuance. By combining different types of rules to suit specific social needs written laws could be both detailed and efficient in setting out provisions, using verbal patterns to draw attention to the distinctions between laws as well as providing sequences and formulas that can easily be followed.

A 6<sup>th</sup> century Lokrian inscription<sup>543</sup> uses this to convey variations in the application of its clauses and sub-clauses. Initially the law is introduced by two commands in the third person imperative giving the main substantive points of the legislation: the specific territories and types of property to which it applies, and the rights of the land to the parents and their son:

τεθμός ὄδε περὶ τᾶς γᾶς βέβαιος ἔστο κατὰ τὸν  
ἀνδαιθμὸν πλακὸς Ὑλίας καὶ Λισκαρίας καὶ τῶν ἀ-  
ποτόμων καὶ τῶν δαμοσίων. ἐπινομία δ' ἔστο γο-  
νεῦσιν καὶ παιδί,

*This law shall be in force concerning the division of the land of Hylia and Liskaria, both allocated and public. And the line of inheritance shall be both to parents and to a son,*

This is followed by a sequence of conditionals to indicate the order of succession in the event of no male heir being present, establishing the procedure for determining who should inherit:

αἱ δὲ μὲ παῖς εἶε, κόραι, αἱ δὲ μὲ κόρα εἶε,

---

<sup>543</sup> Appendix 3 §3 IG IX 1<sup>2</sup> 3:609, *ML* 13, Arnaoutoglou, I. (1998, pp. 110-11), Colvin, S. (2007, pp. 163-66)

ἀδελφεοῖ, αἱ δὲ μὲ ἀδελφεὸς εἴε, ἀνχιστέδαν ἐπινεμέσθο κατὰ τὸ  
δίκαιον, αἱ δὲ μὲ τοὶ ἐπίνομοι ΟἱΙ [ON]

*and if there is no son, to a daughter, and if there is no daughter, to a brother and if  
there is no brother let the nearest relative assume the rights according to the law, and  
if the legal heirs do not (?) [...]*

The text also uses the indefinite construction in three places, one to demonstrate the effect of the law and two ‘deterrent’ clauses to prevent the law being overturned or transgressed. In the first of these, the indefinite is used to create an overarching clause which makes it clear that the fruits of the land shall be ἄσυλος ‘unseized’. This is followed by a separate but related point, that there may be an exception in times of war, using asyndeton and the conditional αἱ μὲ to denote this and to explain the process that must be gone through in order to validate such a movement of people.<sup>544</sup>

ἥοτι δέ κα φυτεύσεται,  
ἄσυλος ἔ{ι} στο {ἔστο}, αἱ μὲ πολέμοι ἀνανκαζομένοις δόξξαι ἄ-  
νδράσιν ἡενὶ κέκατὸν ἀριστίνδαν τοῖ πλέθει ἄνδρας δια-  
κατίος μεῖστον ἀξξιομάχος ἐπιφοίκος ἐφάγεσθαι.

*and whatever shall grow (on it), let it not be seized unless, under constant strain of  
war, one hundred and one men from the best families decide by majority to settle at  
least two hundred men fit for war as colonists.*

The text then aims to preserve itself by prohibiting the possibility of it being overturned using a combination of legislative and religious safeguards.

ἥοστ-  
ις δὲ δαιθμὸν ἐνφέροι ἔ ψᾶφον διαφέροι ἐν πρείγαι, ἐν πόλι, ἐ-  
ν ἀποκλεισία ἔ στάσιν ποιέοι περὶ γαδαισίας, αὐτὸς μὲ-  
ν φερρέτο καὶ γενεὰ ἄματα πάντα, χρέματα δὲ δαμευόσθον

---

<sup>544</sup> Meiggs, R. & Lewis, D. (1969, p. 24)

καὶ φοικία κατασκαπτέσθω κατ τὸν ἀνδρεφονικὸν τετμ-  
όν. ὄδε τετθμός ἱαρός ἔστο τῷ Ἀπόλλωνος τῷ Πυθίῳ καὶ τῶν συνν-  
[άων· ἔμην τοῖ τα]ῦτα παρβαίνοντι ἐξξόλειαν αὐτοῖ καὶ γενεᾷ καὶ πά-  
ντεσιν, τοῖ δ' εὐσεβέοντι ἡίλαος ἔσσο.

*And whoever should bring the division of land or propose a vote in the council of elders, in the city or the assembly, or makes a quarrel about land division, let him be cursed<sup>545</sup> and his whole family for ever, and his money become public and his house be demolished in accordance with the law on homicide. And this law shall be sacred to Pythian Apollo and those worshipped alongside him. And if anyone transgresses them, let them be cursed, himself and all his relatives, and if anyone respects them, let them be blessed.*

This section begins with an indefinite expression introduced with *ὅστις* explaining the penalties for proposing to overturn the law, an offence which seems to be taken very seriously, entailing confiscation of property following a procedure normally used for those convicted of murder. Then, after declaring that the law is sacred, the text uses a pair of antithetical indefinite conditionals joined by the particles *μέν* and *δ'* to contrast the fates that await those who break the law and those who keep it.<sup>546</sup>

The legislation concludes with a series of commands explaining how the land is meant to be allocated, with half going to the original occupants and half to the new colonists.

ἀ δὲ γ[ᾶ τὸ μὲν ἔμισον]  
κομίζοιεν, ἀξιοδότας ἔστο τὰν αὐτῷ ὅτινι χρεΐζοι.  
*vacat*  
τῶν ὑπαπροσθιδίων ἔστο, τὸ δ' ἔμισον τῶν ἐπιφοίκων ἔσ-  
<τ>ο. *vacat*  
*vacat*  
τὸς δὲ κοῖλος μόρος διαδόντο : ἀλλαγὰ δὲ βέβαιο-  
ς ἔστο, ἀλαζέσθω δὲ ἀντὶ τῷ ἀρχῷ.

<sup>545</sup> *ἔμην* could be translated as 'cursed' (Arnaoutoglou, I. 1998, p. 110), 'exiled' (Colvin, S. 2007, p. 164) or 'harmed' all of which could be valid punishments in this context.

<sup>546</sup> Cf. The use of binary threats in Homeric and Hesiodic *gnōmai* see pp.112-14

*The land shall belong, half to the previous settlers and half to the new colonists. And the valley land shall be divided; exchange [of allotted land] shall be valid, but let the exchange take place before the magistrate.*

This may in fact be the reason for this inscription being erected in the first place, mentioned at the end of the text for emphasis, while the practical details of ownership are placed earlier. The repeated use of the third person imperative ἔστο certainly has the tone of a proclamation, suggesting that the publication of the legislation above it is motivated by the occupation or resettlement of land.

The 5<sup>th</sup> century inscription from Halikarnassos whose prescript was examined above addresses a new property law<sup>547</sup> and also has evidence of this type of syntactical patterning. The main rule of the decree (ll. 8ff.) is laid out in the form of an indirect command which is dependent on ἐβουλευσατο in its first line, which underlines the authority behind the legislation and sets out a clear substantive rule that generally prevents property disputes being heard by the *mnēmones* in a specified period.

1	τάδε ὁ σύλλο[γ]ος ἐβουλευσατο...	<i>These things did the sullogos (assembly) decree...</i>
	...μὴ παρ[α]-	
	δίδο[σθαι] μήτε γῆν μήτε οἰκ[ί]-	<i>...that neither land nor house is to</i>
10	[α] τοῖς μνήμοσιν ἐπὶ Ἀπολλω- νίδεω τῷ Λυγδάμιος μνημονε- ύοντος καὶ Παναμύω τῷ Κασβώ- λλιος καὶ Σαλαμικτέων μνη- μονευόντων Μεγαβάτεω τῷ Ἀ-	<i>be entrusted to the mnēmones in the year of the mnēmōnship of Apollonides, son of Lygdamis and Panamyas son of Kasbollis and when these holding the office of mnēmōn for the Salamakissians,</i>
15	φυάσιος καὶ Φορμίωνος τῷ Π[α]- νυάτιος.	<i>Megabates son of Aphyasis and Phormio son of Panyassis.</i>

The subsequent exceptions and modifiers to this rule are given in the form of indefinite

---

<sup>547</sup> *Nomima* I.19, *ML* 32 See Appendix 3 §4

conditionals, using the formulation ἦν δέ τις at ll.16 and 22 which set out alternate means of resolving disputes while the decree is in force. In lines 16ff. we see that the syntactical use of the conditional recognises the existence of a possible problem: the prevention of the *mnēmones* hearing property disputes is not going to stop property disputes arising, so it prescribes a time period within which disputes can be brought before the judges (*dikastai*) with reference to ‘whatever the *mnēmones* know’.

<p>ἦν δέ τις θέλῃ δικάζε- σθαι περὶ γῆς ἢ οἰκίων, ἐπικαλ[έ]- τω ἐν ὀκτωκαίδεκα μηνσὶν ἀπ'ὄτ[ε]- ὁ ἄδος ἐγένετο· νόμῳ δὲ κατάπ[ε]- 20 ρ νῦν ὀρκῶ {ι}σ&lt;α&gt;ι τὸς δικαστάς· ὅ τ[ι] ἂν οἱ μνήμονες εἰδέωσιν, τοῦτο καρτερόν ἐναι.</p>	<p><i>And if anyone wishes to contest in court about land or houses, let him make a summons within eighteen months from when this decree was passed. And according to the law, may the judges swear. Whatever the mnēmones know, that is to have authority.</i></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

This is then followed (at line 22) by a different procedure for how to resolve a dispute that is brought before the judges after this allotted time period, allowing for the litigants to swear oaths before a court and making clear that the point of reference for determining the ownership of the property will be who owned it at the time the decree is in force for.

<p>ἦν δὲ τις ὕστερον ἐπικαλῆι τούτο τῷ χρόνῳ τῶν ὀκτωκαίδεκα μηνῶν, ὄρκον ἔναι τ- 25 ῶι νεμομένῳ τὴν γῆν ἢ τὰ οἰκ- [ί]α, ὄρκῳ δὲ τὸς δικαστάς ἡμι- [ε]κτον δεξαμένους· τὸν δὲ ὄρκον εἶ- [ν]αι παρεόντος τῷ ἐνεστηκότος· κ- αρτερός δ' εἶναι γῆς καὶ οἰκίων οἵτινες 30 τὸτ' εἶχον ὅτε Ἀπολλωνίδης καὶ Πανα- μύης ἐμνημόνευον, εἰ μὴ ὕστερο- ν ἀπεπέρασαν.</p>	<p><i>And if someone summons [the court] later than this period of eighteen months, an oath will be required from the owner of the land and the house and that the judges receive a hēmiekton, and that the oath be sworn with the plaintiff present. And the rights of the land shall be with whoever had them when Apollonides and Panamyas were mnēmones, if they did not lose them subsequently.</i></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Both these provisions offer straightforward systems for resolving disputes while this law is in force, using conditionals to introduce the hypothetical situations under which each procedure is to be employed with apodoses that use the third person imperative and jussive infinitive to set out what is to be done in each event. They also both conclude with clauses in the indefinite (ll.20-22, 28-32) that provide the absolute authority to settle the rights of the respective litigants using the formula ‘καρτερὸν εἶναι’/ ‘κ-αρτερός δ’ εἶναι’ (‘[it] is to have authority’) to emphasise the finality of these provisions, though the latter also uses a further negative condition to indicate an exception in case the property has been lost.

The final provision, again uses a condition introduced by ‘ἢν δὲ τις θέληι’ (*if anyone wishes*), but emphasises that it is reflexively being applied to the law itself by placing the reference to τὸν νόμον τοῦτον ‘this law’ at the start of the clause, and is clearly meant as a deterrent, listing a series of penalties for anyone daring to overturn the legislation.

τὸν νόμον τοῦτον	
ἢν δὲ τις θέληι συγχέαι ἢ προθητα-	<i>And if anyone wishes to abolish this law or hold</i>
[ι] ψῆφον ὥστε μὴ εἶναι τὸν νόμο-	<i>a vote so that this law should not exist, let his</i>
35 ν τοῦτον, τὰ ἔοντα αὐτῷ πεπρήσθω	<i>property be sold and be consecrated to Apollo</i>
καὶ τὸπόλλωνος εἶναι ἱερὰ καὶ α-	<i>and let him be an exile forever...</i>
ὕτὸν φεύγεν αἰεὶ:...	

This is evidently contrasted with the final clause of the inscription, which uses an indefinite to emphasise that those who do not try to disobey or overturn the law have nothing to fear and to remind the readers that their obedience to the legislation is underpinned by an oath that was sworn by the Halikarnassians.

Ἀλικαρνασσέων δὲ τῶσ σ	<i>And of all the Halikarnassians, he shall be</i>
υμπάντων τούτοι ἐλεύθερον ἐ	<i>free, whoever does not transgress these</i>
ναί, ὃς ἂν ταῦτα μὴ παραβαίνη,	<i>things, according to what they swore and</i>
κατό	<i>as is written in the [temple] of Apollo, to</i>
περ τὰ ὄρκια ἔταμον καὶ ὡς	<i>invoke this</i>
γέγραπτ	
45 αὶ ἐν τῷ Ἀπολλῶ[νί]ῳ, ἐπικαλεν.	

Thus, the inscription combines the flexibility of Greek casuistic syntax with its capacity to threaten with prescriptive penalties and channel procedures to produce a decree that is both practical and forceful. By introducing the whole text with an overarching and emphatic statement, this time introduced as an instruction given by the *sullogos*, the central decree is made clear, but the casuistic rules which set out procedures offer more practical details for those who intend to make use of the legislation. Furthermore, by concluding each procedure with indefinite constructions to set the absolute authority behind the decisions allows them to have a clear end point, while deterrents against overturning the law and incentives to abide by it provide ultimate sanctions and obligations to follow the *polis*' decree.

### Syntax and Style

The syntactical structures and formulaic diction of Greek legal inscriptions do not form monotonous lists of rules,<sup>548</sup> but instead show signs of considerable variety in their placement and usage. This is indicative of influences from both the aesthetic preferences and the practical features of early Greek rhetorical and poetic traditions suggesting a normative verbal style that is highly developed and which allows for nuances and subtleties to be conveyed by variations in word order. As Walker has argued, the boundaries between rhetoric in poetry and for practical use in the political and judicial spheres was not always clear and it is likely that techniques from both modes of rhetorical performance would punctuate everyday speech and influence the composition of early written texts.<sup>549</sup> Like poetic and rhetorical texts, legal inscriptions often utilise particular phrases and constructions consistently for specific purposes, however, these can be arranged and employed in different ways depending on the context. This gives texts the flexibility to place particular emphasis on one phrase or another or to produce syntactical variation or symmetry, just as earlier gnomic expressions did, and suggests that, like Homeric and Hesiodic *gnōmai*, written laws were intended as much for the listener as the reader.

Drakon's homicide law, for example, avoids monotony by its use of chiasmus of nouns and verbs which serves both to give this inscription an elegant style which would be

---

<sup>548</sup> Unlike, for example, the formulaic layout of the *Codex Hammurabi* which repeats the formula *šum-ma a-wi-lum* at the start of each provision. This level of variation is more akin to the rhetorical style of the Hebrew laws in the Pentateuch *see pp.124-37*

<sup>549</sup> Walker, J. (1996, pp. 248-51), Thomas, R. (1992, pp.117-20)



pleasing to the ear and emphasises the contrast between alternative courses of action:<sup>550</sup>

[αιδέσασθαι δ' ἔαμ μὲν πατέρ]ρ ει ἔ ἀδελφὸ[ς] ἔ ἡνεξ, ἡπάντ[α]ς, ἔ τὸν κο[λύοντα κρατεν·

*And he may grant pardon if the man has father or brothers or sons and all [are unanimous],  
or the one opposing them shall prevail.*

In these lines, the jussive infinitives αιδέσασθαι ‘let him pardon’ and κρατεν ‘let him prevail’ frame the provision, which means that the verb αιδέσασθαι is promoted and thus introduces the issue of pardon right at the beginning of the set of provisions dealing with the subject.<sup>551</sup> This use of the jussive infinitive to give provisions a syntactical ‘heading’ is also employed at line 20 which reaffirms the effect of the previous section, and again occurs at line 21 where it introduces the section detailing trial proceedings. The chiasmic structure employed here is a recurrent feature of early Greek prose, which may well reflect a style that aims as much at syntactical harmony and rhetorical emphasis as practical verbal cues to aid the navigation of the law.<sup>552</sup>

In the Gortyn law code,<sup>553</sup> the prohibition against women and minors adopting is also given a symmetrical structure with the legal actors in question framing the prohibition:

γυνὰ δὲ με ἀμπαιέθθο μεδ' | ἄνεβος.

*Let not a woman adopt, nor a minor.*

The inversion of the phrases dealing with the two distinct classes of people, and the different inversions of δὲ and με with each places the specified individuals at either end of the clause, but also suggests a preference for symmetry in written, and presumably spoken prose. Instead of listing individuals who may not adopt at the beginning or end of the provision, which may have made it easier to identify to whom the provision applied when reading it, we find variations of word order more akin to those found in rhetoric or poetry suggesting that positional variation is being used for emphasis rather than more straightforward cataloguing.

---

<sup>550</sup> Gagarin, M. (1981, pp. 155-6), Dover, K. J. (1974, p. 62)

<sup>551</sup> Gagarin, M. (1981, p. 154)

<sup>552</sup> Walker, J. (1996, pp. 248-51), Gagarin, M. (1981, pp. 156-58), Kristensen, K. R. (2008, pp.3-8)

<sup>553</sup> IC IV.72, col.XI 18-19 Appendix 3 §6

Similarly, syntactical inversion can be found between repeated clauses. The text from Halikarnassos<sup>554</sup> twice employs the formula καρτερὸς εἶναι to make clear the finality of the clauses of the law when determining who is to have particular rights within the legislation. Lines 16-22, which set out a procedure for settling property disputes concludes with the statement

ὅ τ[ι] | ἄν οἱ μνήμονες εἰδέωσιν, τοῦτο | καρτερὸν εἶναι  
Whatever the *mnēmones* know, that is to be authoritative.

The use of the indefinite creates an air of universal absoluteness with the emphatic final position of the jussive infinitive καρτερὸν εἶναι impressing upon the reader that the *mnēmones* should have the last word.

However, the sentence structure is inverted at line 30, which finishes the particular section of the legislation dealing with what should happen if someone *does* wish to make a claim after the eighteen month period specified has elapsed. The inversion of syntax gives the text variety and makes this authoritative clause stand out:

κ | καρτερὸς δ'εἶναι γῆς καὶ οἰκίων οἵτινες || τότε' εἶχον ὅτε Ἀπολλωνίδης καὶ Πανα | μύνης  
ἐμνημόνευον, εἰ μὴ ὕστερο | ν ἀπεπέρασαν.

*And the rights of the land shall be with whoever had them when Apollonides and Panamydes were mnēmones, if they did not lose them subsequently.*

The order given here by the repeated phrase καρτερὸς εἶναι this time placed before the indefinite οἵτινες adds further emphasis to the finality of the decision to be taken, while the inversion of the structure from the previous instance highlights the contrast between the ways these two procedures are to be settled.

Gortyn's adoption laws can further reveal the ways in which repeated phrases might be flexibly incorporated into larger-scale legal texts to create laws which were simultaneously patterned and rhetorically varied. The provisions for making and annulling adoptions are both

---

<sup>554</sup> *Nomima* I.19, *ML* 32 Appendix 3 §4

introduced with αἰ δέ (κα), and are made up of two stages, a public declaration and donation of ten staters, to be given to the adopter's *hetaireia* when making an adoption - perhaps to pay for the religious rites of accepting a new member - and, in cases of annulment, to be passed to the adoptee by the *mnamon* of the court. The similarity of these two procedures is striking and this is evident in the very similar vocabulary used for making a declaration of adoption:

ἀμπαίνεθαι δὲ κατ' ἀγορὰν | καταφελμένον τομ πολιατᾶ|ν ἀπὸ τοῦ λάο ο ἀπαγορεύοντι.  
*And the declaration is to be taken in the agora before the gathered citizens from the stone for speaking in assembly.*

And of annulment:

ἀποφειπ|άθθο̄ κατ' ἀγορὰν ἀπὸ τοῦ λά[ο̄ ο̄] | [ἀπα]γορεύοντι καταφελμέν|ο̄ν τῶν πολιατᾶν.  
*Let him rescind the adoption before the agora, from the stone for speaking in assembly, before the gathered citizens.*

The ordering of these clauses is varied, but the requirements are identical and this is reflected in the matching formulas used to construct them, each of which contains three parts indicating the key stipulations for the act to be considered binding:

*Declaration to be given κατ' ἀγορὰν (before the agora)*  
*καταφελμένο̄ν τῶν πολιατᾶν (with the citizens assembled)*  
*ἀπὸ τοῦ λάο ο ἀπαγορεύοντι (from the stone (las) for speaking in assembly)*

Thus, these two clauses are made of very similar components which are combined in different orders to create a procedure and its inverse. This combination of topic phrases and variation of word and phrase position is indicative of the type of formulaic composition found in *Iliad* 3.276-91 and *Op.*321-34<sup>555</sup> and characteristic of early rhetoric<sup>556</sup> where repetition is used to create clarity and syntactical unity, but inverted phrases produce variety, symmetry and emphasis.

---

<sup>555</sup> See pp.114-16, 120-24

<sup>556</sup> Gagarin, M. (1981, pp.156-58)

This can also be seen in the specific terms used in this text; the promotion of the term ἄνπανσις ‘adoption’ to the beginning of the opening clause of the section, makes it clear that this is what the section is about. This is reinforced by the repeated application of the same root word in different inflections to distinguish between ἀμπανάμενος ‘the adopter’ and ἀνπαντὸν ‘the adoptee’, in a manner similar to the use of the verb κοσμεν ‘to be *kosmos*’ in Dreros or the participles denoting different parties in the rules on violence in Eltynia. This suggests that the key theme of adoption is clearly marked by the repetition of the term, and its varied application to different persons and situations means that we can distinguish different roles within the context of a specific procedure. On the other hand, a broader semantic field is used to describe more general concepts, such as possession, which clearly have applications beyond the specific area of law. There is considerable variety in which taking ownership of inheritance is expressed: one can ‘take’ ἀνέλεται, or ‘have’ ἔκειν property, or it can ‘be one’s share’ λανκά|νοντι or ‘pass to one’ ἐπικορέν or ἀνκορέν.<sup>557</sup> The effect of this is to create clarity about the topic of the section and the roles of the actors in it, but the use of a semantic field rather than a universal term for ‘ownership’ suggests that this concept could be understood from any of these terms, and it was not felt that there was any need to define it more precisely.<sup>558</sup>

Thus we can see that the verbal patterning of these legal texts highlights both its practical function<sup>559</sup> and its roots in a compositional style developed for rhetorical emphasis and poetic symmetry. The syntax enables structure to be shown through the use of different types of clauses and uses of particles to create layers of legislation or coherent procedural sequences. The repetition of key terms and phrases and the use of similar clauses, could be used to labour major points, but would also enable easier navigation of inscriptions, recalling previous iterations of specific words and topic phrases, clauses and semantic fields to remind an audience of areas of law that related to a given section. Importantly these patterns are verbal, not visual, and while efforts were made to make inscriptions clearer and easier to read,<sup>560</sup> the preference for varying the arrangement of syntactical devices to mark texts seems to be aimed at attracting the attention of the listener rather than catching the eye of a reader.

---

<sup>557</sup> Thomas, R. (1992, pp. 134-35), Davies, J. K. (1996, p. 40)

<sup>558</sup> See pp. 189-94, Willi, A. (2007, pp.72-79)

<sup>559</sup> Gagarin, M. (1981, p.156)

<sup>560</sup> Gagarin, M. (2008, pp. 45-61)

## Compilations

These effects would not only apply to individual pieces of legislation, but would also have served to locate legal texts in wider normative frameworks allowing longer compilations of rules to be produced that facilitated practical use through their varied yet patterned diction. At Gortyn we find evidence in inscriptions of efforts to create increasingly collected and organised legislation from the 6<sup>th</sup> century onwards that demonstrate awareness of their place among the *polis*' evolving legislation. Just like the very early inscriptions from Dreros, individual provisions began to be fitted onto other inscriptions, especially those on monumental buildings, but by the fifth century, inscriptions were being put up as monuments in their own right and legislation started to be grouped under discernible general categories.<sup>561</sup>

The syntactical conventions and visual innovations for unifying such rules into single texts can best be observed in the Gortynian 'Great Code'. The good quality of the carving, regular arrangement of letters painted in red and the use of columns rather than walls to write on may have made the inscription easier to read.<sup>562</sup> However, the means for navigating the law are more syntactical than visual: the text is written *boustrophedon* with many new provisions starting mid-line or split across lines. Spaces seem to have been used in some places, but these do not always seem to be regularly employed and there is some debate over whether their function was to mark out new laws or simply to get around anomalies in the rock.<sup>563</sup> Far more reliable means of navigation comes in the use of consistent, formalised syntax with new pieces of legislation marked by the use of asyndeton,<sup>564</sup> and rhetorical

---

<sup>561</sup> Davies, J. K. (1996, pp. 34-6) cf. in particular *IC IV* 75 and 41. Gagarin, M. (2008, p. 122; 1982, pp. 136-37) has also argued that the text of *IC IV* 43 represents an intermediate stage in this process as two separate laws with their own introductory clauses have been included on the same monument. All of these texts have been dated to the early fifth century suggesting that the process of compiling and amending the law was active and continuous at the time the 'Great Code' was made. For evidence of earlier provisions included in later compilations cf. *IC IV* 41 col. VII 1-19 cf. *IC IV* col. VII 10-15, *IC IV* 72 A cf. *IC IV* 81, for evidence of stelae being reused cf. *IC IV* 43, 47 & 48. Davies, J. K. (1996, pp. 46-54), Gagarin, M. (2008, pp. 170-72). Similar evidence of editing has also been found in Athens *IG* i<sup>3</sup> 61 (Osborne, R. 1999, p. 346) and Thomas (1989, pp.36-44) has also argued that the gradual process of organising the law and creating an archive in the Metrōon shows a society becoming more accepting of legal writing and developing mechanisms for organising and retrieving texts from large volumes of material.

<sup>562</sup> Gagarin, M. (2008, pp.126-27), Gagarin, M. & Perlman, P. J. (2016, pp.44-45), Sealey, R. (1994, pp. 37-8)

<sup>563</sup> Davies, J. K. (1996, pp. 36-37), Gagarin, M. (1982, pp. 138ff.), Willetts, R. F. (1967, p. 4)

<sup>564</sup> Gagarin, M. (1982, pp. 130-35)

devices to punctuate the text and make certain key phrases or topic areas stand out. This suggests that one would need to have a working knowledge of the text's verbal structure before one could locate legislation for practical use.<sup>565</sup> Moreover, the variations in the type of introductory clauses that we see in this inscription, with most sections beginning with conditions, but some, like the rules on adoption, promoting a topic word to introduce their legislation, suggest that rhetorical cues could also be used to mark where provisions start and end. This therefore implies that traditional oral methods for making key points easier for an audience to recall were being used over visual indicators and that any enhancements to the appearance and visual organisation of the text were intended to augment the syntax rather than as the primary means of navigating the inscription.

Gagarin's analysis based on the distribution of laws introduced with *asyndeton*<sup>566</sup> shows several sequences of loosely connected enactments, but also that several, seemingly related sections are placed quite separately from one another and the level of detail within sections often seems to tail off into collections of miscellaneous provisions.<sup>567</sup> This pattern can be found throughout the 'code', alternating coherent provisions for dealing with the most complex provisions with lists of related rules that are either more readily addressed by other means, or details of exceptions that did not fit into the main provisions.

In particular, Gagarin has shown the contrast between the high level of detail and procedural continuity given in the first section on heiresses (7.15-8.30), before a collection of subsequent provisions is added afterwards (8.30-9.1). Likewise, the rules on adoption<sup>568</sup> give lots of procedural detail with a mixture of official and religious processes stipulated for one wishing to make an adoption or to annul it, but certain issues, like the death of an adopted son and the prohibition of women and minors adopting are addressed far more simply.<sup>569</sup> The section on unlawful seizure<sup>570</sup> begins with the escalating procedures for infringement of the main law (1.1-18), contention about whether an individual is free or a slave (1.18-39), and slaves taking sanctuary (1.39-49). However, these are followed by a series of single

---

<sup>565</sup> Kristensen (2008, pp.5-9) has also argued that with fairly widespread 'functional literacy' and the appearance of gaps in the legislation or areas where key details appear to have been understood imply that there was a significant tranche of the community that had a 'working knowledge' of Gortynian law in general which would have been necessary to use this text. On levels of literacy, *see pp.204-5*

<sup>566</sup> Gagarin, M. (1982, p.131; 2008, p. 156)

<sup>567</sup> Davies, J. K. (1996, pp. 40-44), Gagarin, M. (2008, pp. 163-67)

<sup>568</sup> Appendix 3 §6

<sup>569</sup> Gagarin, M. (2008, pp. 165-67)

<sup>570</sup> Appendix 3 §5

enactments, separated by gaps in the text, detailing problems that may have occurred as side issues to the main text: if one ordered to pay fines for unlawful seizure should die (1.49-51), if one of the parties is *kosmos*, perhaps because this official could not be involved in a dispute while in office (1.51-55), and exempting those making seizure of condemned individuals from this legislation (1.56-2.2). These final three rules do not follow the sequential procedure outlined in the other parts of text and could easily be applied to any of the earlier procedures, suggesting that they were either placed there for emphasis of these more general principles or that these ideas were issues that required clarification but were not composed as part of the main provisions and thus were placed at the end of the section before the text moves on to a new topic.

The arrangement of more complex laws at the start of inscriptions followed by simpler, clarifying statements can also be found in the Lokrian<sup>571</sup> text, where the more complex provisions are followed by a series of simple decrees on how land is to be divided in general. The positioning of this critical section may have been for stylistic purposes, declaring the justification and ratification of the earlier procedure, or perhaps it was thought that the spelling out of the order of succession to property, the prohibition against land disputes and exception of military emergencies was of greater importance and needed to be promoted ahead of the new decree on redistribution of land. This suggests that the most complex issues were the ones which had attracted greatest debate in the past and thus had their permutations discussed and worked out in more detail<sup>572</sup> and that simple provisions which did not fit into longer sequences were inserted after main provisions. This suggests that, like the structure of Hesiod's *Works and Days*,<sup>573</sup> this collection of laws was written with an interest in grouping key ideas and producing logical sequences, but not necessarily in the most considered order for someone wishing to search a written text.

The organisation of the Gortyn 'code' also varies considerably on a larger scale<sup>574</sup> and again, it is the logical use of key words and formulas that helps associate related sections. The rules on inheritance fall - logically enough - after divorce which comes after seduction and adultery, however, the rules about heiresses and adoption, which one would expect to relate closely to inheritance, seem to have been interspersed with other sets of rules addressing

---

<sup>571</sup> Appendix 3 §3

<sup>572</sup> Gehrke, H-J. (2009, pp.396, 402-5)

<sup>573</sup> West, M. L. (1978, pp. 44-58), Heath, M. (1985, pp.245-53)

<sup>574</sup> Gagarin, M. (1982, pp.131-37)

different kinds of property transactions.<sup>575</sup> Despite the fact that they are placed so far from one another, there is some evidence of linguistic techniques that would have connected the sections on adoption and inheritance in the minds of both audiences and those assembling the collection. The text provides the reader with two types of verbal cues to demonstrate the dependence of the law on adoption on the laws on inheritance; there are explicit references which seem to have been based on the written text, but there are also subtler allusions which would enable an audience to connect the normative fields more subconsciously.

The section on adoption<sup>576</sup> directly cross-references other parts of the legislation, particularly lines 10.39-11.6, which refers to the obligations on adopted sons with the term ἄπερ... ἔγ[ρατ]ται and ἄ ἔγρατται ‘as is written’ and seems to assume that the reader would know what male and female heirs should be allocated, as specified in 4.39-46, because this forms the benchmark for determining what adoptees should receive. The terms ἄ ἔγρατται used in lines 10.39-11.6 and τάδε τὰ γράμματ’ ‘these same writings’ at the end of the section on adoption show an interest in the more inter-connected relations between the laws in the code. The fact that this piece of legislation is conscious of and depends on the rules on inheritance shows a holistic approach to the act of creating laws so that they were coherent and efficiently compiled in efforts to avoid duplication or contradiction.<sup>577</sup> Such explicit written cross-referencing and the use of a term that refers so directly to writing is also suggestive of a community becoming more accustomed to think of its collected legislation as a body of written law.<sup>578</sup>

However, there are other means by which the laws related to one another which suggest that this collection of rules also continued to be conceptualised and used in a manner more akin to oral normative discourse. There is verbal and syntactical continuity both within and between the ‘Great Code’s’ sections on inheritance and adoption, suggesting that these two areas of law occupied a similar normative space in the oral culture of the *polis* of Gortyn despite the distance between them on the inscription. As we have seen, there is evidence of formulaic repetition which emphasises the similarities between procedures for adoption and annulment, and the section on inheritance similarly repeats the formula ὁπότε κ’ ἴοντι,

---

<sup>575</sup> Gagarin, M. (2008, pp. 163-7)

<sup>576</sup> Appendix 3 §6

<sup>577</sup> Davies, J. (1996, pp. 54-55)

<sup>578</sup> Gagarin, M. (2008, pp. 91-92) *see pp.235-39* cf. also the inscription from Eltynia 1.7 which also references ‘what is written’ (ἄ ἔγρατται), perhaps in relation to a fine or compensation for a *pēiskos*, and the Lokrian text which describes its penalties for attempts to infringe of overturn the law as ‘in accordance with the law on homicide’ (ll.9-14)



δύ|ο|μίαν μοίραν(ς) ῥέκαστον ‘*whatever there is let each have a double/single share*’<sup>579</sup> which underlines the relationship between the cases of male and female heirs, but also uses μ|έν and δ|έ to highlight the contrast. We also find similar terminology that links these passages: λανκάνεν and μοῖραν appear in both and the section on adoption appears to nod to the allocations for legitimate biological sons and daughters when it states that, in the absence of any of the former, adopted sons should receive the same share (ῤισφόμοιρον) as daughters but no more.

The recurrence of these terms when the adoption laws cross-reference this section would certainly have helped someone consulting the law to recall the connections between these sections of the legislation and shows the way that these sections used linguistic continuities to augment the more explicit links between them in the minds of their readers and listeners.<sup>580</sup> The combination of linguistic markers associating inheritance with adoption shows an awareness of their place in the normative framework of the text, and suggests that these two concepts were related in the minds of the people who composed them. Moreover, the reliance on verbal cues, both explicit and implicit, to bridge the gap between these sections in the text rather than visual organisation, suggests a society that is more accustomed to recalling relevant information on the basis of such cues, than on relying on systematic, searchable archiving.

These cues can also be used to connect separate pieces of legislation and also to engage with lawmaking as a continuous process. The evidence of legislation addressing similar subjects to that found in some areas of the ‘code’, the syntactical completeness of the text and its general organisation mean it is likely that the individual clauses of the ‘Great Code’ were the product of separate enactments before they were collected into this single ‘code’.<sup>581</sup> Moreover, the inscription uses similar formulas and vocabulary to refer to other related pieces of Gortynian legislation, suggesting that it was part of a wider network of written laws in this particular *polis* and demonstrating an awareness of its place as the provisions set out at a particular time. The simple statement marking the end of Gortyn’s laws on adoption proclaims their authority but also shows that Gortynian legislators were considering the application of these rules in an environment where there were pre-existing provisions in place:

---

<sup>579</sup> Col.4.40-43

<sup>580</sup> Gagarin, M. (2008, p. 146; 2004 176-77), Kristensen, K. R. (2008, pp.3-9), Davies, J. K. (1996, pp. 54-55)

<sup>581</sup> Gagarin, M. (1982, pp. 133-6)

κρέθαι δὲ τοῖδδε ἄ-  
 20 ι τάδε τὰ γράμματ' ἔγραψε,  
 τῶν δὲ πρόθηα ὅπαι τις ἔκει ἔ- ἄ-  
 μπαντύι ἔ- πὰρ ἀμπαντοῦ μὲ- ἔτ' ἔ-  
 νδικον ἔ- με- ν. *vacat*

*And these writings shall stand from the  
 time of their inscription, and concerning  
 earlier matters, whatever one has, whether  
 as an adopted son or adopter, let there be  
 no liability.*

This final statement serves to define the application of this set of rules, in this case by declaring that the text is not retro-active, acknowledging the fact that there may have been different methods for making such arrangements over which it did not have jurisdiction. The lack of reference to other written laws and the use of the indefinite ὅπαι τις ἔκει ‘*whatever anyone has*’ to describe the range of possible relationships that predate its enactment suggests that, before this text, adoption was performed in a variety of ways, not all of which were necessarily circumscribed by written laws before this text was enacted.

Furthermore, we can get a sense of the ongoing process of legislation at Gortyn from the end of the inscription (11.24-12.19) where there is a collection of addenda, in a tradition of editing that, on the evidence of earlier inscriptions, appears to have existed in this community for some time.<sup>582</sup> Many of these provisions modify laws that appear earlier in the text and which seem to have been added shortly after the original monument was put up.<sup>583</sup> The first of these adds further detail to the law on unlawful seizure which opens the text:

ἄντροπον ὅς κ' ἄγει πρὸ δίκας  
 αἰεὶ ἐπιδέκεθαι. *vacat*

*Whoever seizes a man before trial,  
 let that man [i.e. the victim] be always received.*

The indefinite construction of this clause recalls the hypothetical situation introduced in the first law of the code, but the promotion of the word ‘man’ (ἄντροπον) in the accusative indicates that it is the victim who is to be granted asylum. This allusion to the original piece of legislation shows that at some point the text of the law needed this revision to provide an additional means of protecting people from unlawful seizure, and that Gortynian lawmakers

<sup>582</sup> Gagarin, M. (2008, p. 127), Davies, J. K. (1996, pp. 43-53)

<sup>583</sup> Gagarin, M. (2008, pp. 170-71)

preferred to add this to the end of the compilation rather than create a separate inscription and lacked the space to add it to the section to which it pertains. As we have seen, the code itself refers to a number of other laws using the formula αἱ ἔγρατται, which can reference other sections of the text itself, but at 12.1-4 we find the expression αἱ ἔγρατ | το πρὸ τονδε τον γραμμάτων ‘as was written before this writing’ which clearly indicates that it is pointing to an earlier inscription.<sup>584</sup> This demonstrates that the Gortynians were creating and redrafting earlier laws and were aware of the limitations of written legislation: as society evolved, legal writing had to move with it as new questions arose. Therefore in producing this text the Gortynians were making legislation which was part of a continuum in their normative culture and which continued to require amendment or clarification after the erection of the monument.

Another of the addenda in this section (11.26-31) gives general instructions to judges on how a procedure is to be conducted and is particularly revealing about the relative status and function of written law in court proceedings of fifth century Gortyn:

τὸν δικαστάν, ὅτι μὲν κατὰ | μαίτυρανς ἔγρατται δικάδδ|εν ἔ ἀπομοτον, δικάδδεν αἱ  
ἔ|γρατται, τον δ’ ἄλλον ὀμνύντ|α κρίνεν πορτὶ τὰ μολιόμεν|α.

*Let the judge decide whatever is written for him to decide, according to witnesses or by oath of denial. And about other things let him decide under oath according to the pleas [of the litigants].*

This gives significant detail on the way in which the oral and the written would have interacted in Gortynian judicial procedure in a manner very similar to that of the first provision regarding wrongful seizure. In both cases, the judge’s job in the first instance is to assess which provisions to apply in a given case on the basis of oaths and witness testimony, and hand down the specified penalty. The legislation therefore appears to quantify penalties and facilitate this more complex part of the judicial process, but is conscious that legislators cannot possibly foresee every eventuality and thus allows the judges to exercise a level of discretion and allow for negotiation within the limits of the law or where the law did not reach.<sup>585</sup>

---

<sup>584</sup> Gagarin, M. (2008, p. 146)

<sup>585</sup> Papakonstantinou, Z. (2008, pp. 9-10)

## Conclusions

The laws of early Greek *poleis* seem to have employed a distinct set of syntactical forms and used a developed compositional style that is consistent with the normative language and beliefs expressed in Homer and Hesiod. It is this diction as much as the act of writing provisions on inscriptions which marks texts out as laws and the appearance of similar concepts and language in normative contexts from sources that pre-date written inscriptions suggests that this sense of what law ‘looked like’ was as much a feature of ‘oral laws’ as it was of written legislation. Just like descriptive norms relating to the notions of *dikē* and *themis* or of the divine powers and social pressure behind oaths, prescripts of laws frequently demonstrate concerns that they should be protected by the gods and ratified by the people. Whatever the political reality of each *polis*, the idea that there should be popular involvement seems extremely common, even in *poleis* which operated under tyrants, and suggests that legislators needed to appeal to this in order to achieve acceptance.

We also find that the style and syntax of laws provide legislation with both the functionality and texture to be easily navigated and applied. Again, the various syntactical forms and their usages are comparable to the ways they were used in normative contexts both between *poleis* and in earlier poetic discourse, suggesting that Greek speakers had a deeply-rooted normative language that was adopted for the use of written law. In both written laws and the Homeric and Hesiodic agreements and maxims we saw in Chapter 2, the formulaic use of indefinites creates the sense of an all-encompassing general case, conditionals provide the flexibility either to act in much the same way as indefinites or to give details of more specific cases depending on the absence or presence of a connective particle, and third person commands and jussive infinitives give authoritative instructions to be followed either in their own right or as the apodosis of an indefinite or conditional clause. Moreover, the structure of the oath in *Iliad* 3 or the collections of maxims in Hesiod’s *Works and Days* show that this diction’s capacity to create complex prescriptive procedures addressing multiple eventualities was already in use before written laws existed and therefore suggests that the types of complex norms that we find in inscriptions could be formulated before the use of writing and that written laws took their cue from oral counterparts.

The common patterns in archaic Greek diction do not however, produce repetitive, monotonous legislation. Instead, lawmakers seem to have preferred to manipulate their formal language in order to create variety and symmetry or for rhetorical effect and this too suggests a compositional style that is more in keeping with the needs of speaker and audience

than with scribe and reader. Inversions of formulaic syntax or the use of different vocabulary to contrast a repeated concept with the main topic of a law demonstrate Greek lawmakers' interest in variation as a means of creating an impression on the audience. This often reveals details about what legislators may have seen as the most relevant point at the time, but also suggests they were using a language rooted in the conventions and techniques of rhetorical and poetic composition, and an understanding that these inscriptions could be heard as well as read.<sup>586</sup>

This can also be seen in the organisation of lengthier legal inscriptions, which are often arranged into thematic sections starting with developed sequences of rules but concluding with miscellaneous pieces of clarifying or amending laws. The mostly logical, though at times interrupted, arrangement of sections in the Gortynian 'Great Code'<sup>587</sup> suggests a society with a well-developed vocabulary and compositional technique for impressing key points on an audience in speeches and narratives, but not for making such lengthy texts easy to navigate visually,<sup>588</sup> preferring instead to use explicit connecting phrases or common verbal formulas and terminology to highlight connections between sections. While there is evidence of significant developments in the skills of stoneworkers, appreciation of the visual effectiveness of monumental inscriptions and revision of earlier texts and cross-references between and within inscriptions,<sup>589</sup> such developments must be seen as enhancing the syntactical structures inherent in their compositional style rather than the primary means by which such texts were navigated.

---

<sup>586</sup> Thomas, R. (1992, p. 76)

<sup>587</sup> Dover, K. J. (1974, pp. 40-46)

<sup>588</sup> Thomas, R. (2005, pp. 53-4), Kristensen, K. R. (2008, p.3)

<sup>589</sup> Perlman, P. J. (2004, p. 182), Gagarin, M. (2008, pp. 47, 52)

## Chapter 4

### How Writing Changed the Law

This thesis has argued that we can see evidence of legal language, norms and institutions in early hexameter poetry which are comparable with those found in the written laws of Greek communities between the 7<sup>th</sup> and 5<sup>th</sup> centuries. We have seen significant signs of continuity in the diction that made both ‘oral laws’ and legal texts which allowed rules to be composed that were authoritative, applicable, organised and recognisable. We have also identified important similarities in the potential areas of dispute and the solutions expressed in both Homeric and Hesiodic discourse and the written rules Greek *poleis* were using to regulate their societies. However, we must also explore the extent to which written law came to act as a disruptive technology, impacting the norms, institutions and modes of legal communication in Greek society. Between the 6<sup>th</sup> and 5<sup>th</sup> centuries the bodies of written legislation that grew up in a number of *poleis* gradually became increasingly detailed and definitive loci of normative power, with networks of inscribed rules that could accrue over time, setting out complex, repeatable procedures that could be used in a wide variety of dispute resolutions. The practices of compiling, editing, and cross-referencing written laws which explicitly required judges to follow them suggests that, while they acknowledge the existence of traditional norms and often assimilated them into their procedural legislation, written laws came to define the procedures and options available in formal resolutions. This must have changed the relationship between unwritten norms and formalised judicial procedures, distinguishing ‘oral laws’ from those which were written down and fundamentally changing the principles and sources of normative authority behind dispute resolutions.

At Athens, we see that by the 5<sup>th</sup> century, the concept of ‘unwritten law’ had emerged as a distinct type of rules alongside ‘what was written’,<sup>590</sup> suggesting that traditional norms and the means for expressing them were still seen as *nomoi* and carried considerable weight,

---

<sup>590</sup> Cf. *Rhet.* 1.15.4-5 *Pol.* 1287b, cf. the use of explicit cross referencing using phrases like the Gortynian *ai egrattai* or *tade ta grammata* – see pp.175-79, 235-39. Thomas, R. (1992, p.147; 1996, p.11), Harris, E. M. (2004, p.20; 2006b, pp.163-65), Humphreys, S. C. (1988, p.473)

even after legal proceedings were bound to follow the terms set out in writing.<sup>591</sup> The earliest evidence of this distinction is in Sophocles' *Antigone*, where we see an understanding that written law came from individual human beings, typically attributed to 'lawgivers', whereas *agraphoi nomoi* were customs that were no less powerful: supported by the gods and the traditions of the community.<sup>592</sup>

Κρέων            καὶ δῆτ' ἐτόλμας τούσδ' ὑπερβαίνειν νόμους;

Ἀντιγόνη        οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε,  
οὐδ' ἡ ξύνοικος τῶν κάτω θεῶν Δίκη  
τοιούσδ' ἐν ἀνθρώποισιν ὄρισεν νόμους.  
οὐδὲ σθένειν τοσοῦτον φόρμην τὰ σὰ  
κηρύγμαθ', ὥστ' ἄγραπτα κάσφαλῆ θεῶν  
νόμιμα δύνασθαι θνητὸν ὄνθ' ὑπερδραμεῖν.

Creon            And yet you dare to transgress (*hyperbainein*) these laws (*nomous*)?

---

<sup>591</sup> Cf. The introduction in 403 BCE of a law stipulating that magistrates could not enforce an *agraphos nomos* (Andok.1.87) Kapparis, K. (2019, pp.35-45)

<sup>592</sup> Soph. *Antigone* 449-55, cf. 368-70; Harris, E. M. (2004, pp.31-34), cf. also Eur. *Supp.*433 and Thuc.2.37.3 (*discussed below*). The distinction probably arose some time in the early 5<sup>th</sup> century after *nomos* had begun to be used to refer to enacted statutes as well as customary rules. Ostwald's (1986, pp.89-92) analysis of the evolution of the term *nomos* sees its usages in the 5<sup>th</sup> century develop from both statutory and customary rules just after the time of Cleisthenes to referring solely to prescriptive norms (whether divinely ordained, customary or legal) by the mid-fifth century, and it seems likely that the emergence of unwritten law as a distinct category should be viewed in this context. It is also worth noting that there is significant evidence of a dichotomy emerging in Greek political and philosophical discourse during this time period between *nomos* which implied some kind of human or divine agency behind a practice or behaviour and thus could be readily articulated as a principle or intention, and *physis* which implies an observable but essentially organic pattern in nature (Guthrie, W. K. C. 1977, pp.55-134). This understanding of *nomos* when applied to law helps contextualise the different forms that Antigone is alluding to: written and unwritten *nomoi* both refer to prescriptive rules that people should live by in order to live a civilised life and elevate themselves above the animal kingdom, but the difference is in the nature of the agents and means of enforcement behind them. (Guthrie, W. K. C., 1977 pp.60-84; Carey, C. 1996, pp.37-43; Ober, J. 2005, pp.394-95; Long, A. A. 2005, pp.412-17) This represents a significant development from the discourse of *dikē*, *themis* and *kosmos* that we saw in Chapter 2, all of which could equally refer to natural, observable 'laws of nature' as well as to rules with clear human or divine agents and thus suggests that the latter was embedded in the former.

Antigone For it was not Zeus who declared these things for me,  
 Nor did that neighbour of the gods, Justice (*Dikē*)  
 Create these laws (*nomous*) among men below.  
 Nor do I believe that your decrees (*kērugmata*) have such power  
 That they can surpass (*hyperdramein*) the immutable unwritten  
 Laws (*nomima*) of the gods that rule over anyone who is mortal.

While *agraphoi nomoi* embodied the ideal of *dikē* and could be seen as arising from divine sources or as the understood rules of the community, much like the rules found in Archaic hexameter poetry, written laws seem to have been understood as the rules set out either by an individual *nomothetēs* or a civic body at a given time, and were often enshrined on monuments that embedded them in the physical fabric of the city. In *Antigone*, as in other Attic discourse, *nomoi* are distinct from both temporary decrees (Antigone's *kērugmata* or the *psēphismata* that were passed by bodies in democratic Athens) and the rules of divinely-ordained custom (*nomima*), in that they are permanent laws with identifiable human sources.<sup>593</sup>

Despite these differences in how they were understood to arise and the manner in which they were propagated, the delineation of different types of norms appears to have been subtler and the relationships more co-dependent than Antigone's distinctions between *nomoi*, *nomima* and *kērugmata* would suggest.<sup>594</sup> Written law still engaged with the same sources of popular approval and divine justice as unwritten *nomoi* and frequently sanctioned or left space for traditional norms and dispute resolution mechanisms. We have seen how written

---

<sup>593</sup> Harris, E. M. (2004, pp.35-37), Kapparis, K. (2019, pp.37-38), Ostwald, M. (1986, pp.100-2), Sickinger, J. P. (2007, p.106). The distinction between the written and unwritten was not lost on Aristotle who counts law among the 'artless proofs' (*atechnoi pisteis*) that orators can use and cites Antigone when he explains the way that law (*ho gegrammenos*) and justice (*ho koinos*) might be set in opposition to one another to support an argument. (*Rhet.*1.15.1-8). However, such arguments are never used in our surviving rhetoric, which far prefers to present the laws (*nomoi*) as a part of a continuum of justice stemming from a right-thinking *nomothetēs* and administered by sensible juries. Anaximenes in *Rhetorica ad Alexandrum* also distinguishes between 'justice' (δίκαιον) as the unwritten customs (ἔθος ἄγραφον) by which most people determine good behaviour from bad, and 'law' (νόμος) which is the generally agreed rules of the community expressed in writing (διὰ γραμμάτων) (1421b-22a). That said, the development of traditions around ancient lawgivers did confer an almost mythical status on these figures, making it exceedingly rare for their rules to be questioned and embedding them and their rules into the *polis*' sense of cultural identity see pp.240-44

<sup>594</sup> Kapparis, K. (2019, p.3)



laws often explicitly drew on the same divine authority as unwritten rules, but they were also incorporated into a normative discourse among Attic orators and philosophers which overwhelmingly presented the written and unwritten *nomoi* of the *polis* as complementary.<sup>595</sup>

This chapter will examine how written law was applied to the existing and evolving concerns that attracted legislation, but also the gaps which left room for moral rules to influence behaviour, and areas of both substance and procedure where inscribed *nomoi* and *agraphos nomos* interacted with one another. It will consider the ways *poleis* began to deal with increasing volumes of written legal material – whether creating collections of law or preferring other means of organisation – and the impact of such solutions on the physical, legal and cultural landscapes of the *poleis*. This will inform a wider discussion of the development of legal writing and the relationship between written and unwritten in the normative discourses which shaped the moral interpretation of law and were themselves influenced by the importance of law as a source of evidence and instruction.

### I. Continuity

Thucydides' recreation of the funeral oration of Perikles emphasises the 'equality before the law' that Athenians enjoyed but lists it alongside officials and unwritten customs, acknowledging the relationship between them and suggesting that social hierarchy, written and unwritten laws were each recognised as parts of Athens' normative culture.<sup>596</sup>

ἀνεπαχθῶς δὲ τὰ ἴδια προσομιλοῦντες τὰ δημόσια διὰ δέος μάλιστα οὐ  
παρανομοῦμεν, τῶν τε αἰεὶ ἐν ἀρχῇ ὄντων ἀκροάσει καὶ τῶν νόμων, καὶ μάλιστα  
αὐτῶν ὅσοι τε ἐπ' ὠφελίᾳ τῶν ἀδικουμένων κείνται καὶ ὅσοι ἀγραφοὶ ὄντες αἰσχύνῃ  
ὁμολογουμένην φέρουσιν.

Thuc. 2.37.3

We are free and concordant in private, but in public, since it is most necessary we do not break the law (*paranomoumen*), out of obedience of those in power (*tōn... en archē ontōn*) and the laws (*tōn nomōn*), and especially those which are of benefit to

---

<sup>595</sup> Thomas, R. (2005, p.52-54; 1996, pp.11, 16; 1992, pp.68-73,130), Kapparis, K. (2019, p.34)

<sup>596</sup> Thomas, R. (2005, pp.52-3), MacDowell, D. M. (1978, p.46) cf. Soph. *Antigone* 449-55 and Lysias 6.10 which cites Perikles perhaps referring to Thucydides' version of the speech.

those who are wronged and those that are unwritten (*agraphoi*) that are agreed to bring shame (*aiskhunēn*).

By qualifying obedience to the *nomoi* with ‘especially those which grant relief (*ophelia*) to those who are wronged (*adikoumenōn*)’, and saying that *agraphoi nomoi* carry weight because they bring shame (*aiskhunēn*) which is generally recognised (*homologoumenen*) Thucydides, while proclaiming the importance of the law itself to the Athenians, also acknowledges a role for public pressure in enforcing ‘unwritten’ *nomoi*.<sup>597</sup> Likewise, he identifies the authority of officials (*hoi en archē*), several of whose offices pre-dated the publication of written laws,<sup>598</sup> and thus that they too could be important sources of legal norms through their decrees and pronouncements. This suggests that the Athenians’ legal culture was not only predicated on written law, but also on hierarchies, traditional beliefs and social drivers that were acknowledged by and assimilated into written rules, but were not themselves products of writing.

Despite the associations with ‘justice’ or ‘democracy’ Athenian writers would later attribute to written law,<sup>599</sup> or the references legal texts explicitly made to popular approval, they did not in and of themselves lead to major social reforms but, as Thomas has argued, either reflected the existing civic structures and normative cultures of the *polis* or were used in conjunction with changes to cities’ political systems.<sup>600</sup> The existence of a culture of shared norms and accepted procedures for resolving disputes, and overt resistance to the notions of professional advocacy or bureaucratic juridical thought<sup>601</sup> meant that law in the Archaic and Classical *poleis* did not really develop into a discipline or practice that was independent of the normative culture of the ordinary citizen. The capacity of legal writing to change the way that judicial systems worked was therefore limited by the needs of communities and, while collections of rules grew and evolved, they remained firmly rooted in the existing practices of the *polis* and the everyday language of its people.

---

<sup>597</sup> Ostwald, M. (1986, pp.104-5, 120), Humphreys, S. C. (1988, pp.466-69)

<sup>598</sup> Cf. *Ath. Pol.* 3.1-4

<sup>599</sup> Cf. Solon fr.36, Arist. *Pol.*1286a 9-7, 1287b 5-8, 1270b, 1338a 15-17, Eur. *Supp.*433, Gorgias *Palamedes* fr.11a, 30

<sup>600</sup> Thomas, R. (1992, pp.72, 129-157; 2005, pp.53-54), Wilson, J-P. (2009, p.556)

<sup>601</sup> Carey, C. (2018, p.75), Lanni, A. (2016, pp.49-55)

### *Officials and their roles*

The institutions and officials of Greek *poleis* may have been enshrined in written laws but were not necessarily created by them. Several of our earliest pieces of legislation from Greece pertain to officials but suggest that their roles and even several of the limitations of their authority were already well understood at the time of writing. The Dreros text's main prohibition implies that the term of office was already limited, much as many official positions in later Greek *poleis* were annual.<sup>602</sup> However, the fact that it makes no mention of the length of the term a *kosmos* could serve, suggests that the practice of limited term offices may have been in existence for some time before this inscription<sup>603</sup> was written and may never have been enshrined in writing.<sup>604</sup> Likewise, there is no mention of the institutions one might turn to when prosecuting a *kosmos* in breach of this rule, the role of the *omotai* in ratifying or enforcing the law or of how the law itself was enacted, again suggesting that these details were understood by the people of Dreros and required no further clarification. A 7<sup>th</sup> century inscription from Tiryns<sup>605</sup> also details a religious hierarchy which seems to have been well established and the legislators of the *polis* seem to have felt no need to clarify any details about the selection, roles and privileges of the different officials mentioned. The early date of these inscriptions and the fact that the details of the offices regulated by the laws are implied rather than defined by them suggest that the mechanisms and hierarchies that appear in them were in use before the law was written down.<sup>606</sup>

Moreover, the second-highest rank of the religious officials mentioned in the Tiryns inscription is occupied by the *hieromnēmones*, whose title seems to imply a role in remembering or perhaps recording a combination of the rules or acts of the hierarchy they are a part of, a function which the early date of the inscription suggests may have pre-dated written laws. *Mnēmones* ('remembrancers') and *hieromnēmones* appear in inscriptions from a

---

<sup>602</sup> Humphreys, S. C. (1988, pp.470-71), cf. Arist., *Pol.* 1261a22-b6, *Ath. Pol.* 3.1-4, (*GP* G14p-g2) Gagarin, M. & Perlman, P. J. (2016, pp.133-4), Kapparis, K. (2019, p.24)

<sup>603</sup> Osborne, R. (1996, p. 186)

<sup>604</sup> This is supported by several other texts from both Dreros and Gortyn alluding to *kosmoi* and the length of time between terms of office, but never to either the length of their tenures or the means by which they were selected. Gagarin, M. & Perlman, P. J. (2016, pp.72-73). This is also suggested by the chronology in the *Ath. Pol.* (3.1-4) which describes the emergence of the *basileus*, *polemarch* and *archon*, and the subsequent limitation of official terms to 10 years before both the appointment of the *thesmothetai* (3.4), by which point the terms of offices had already been further reduced to 1 year, to record rules before the late 7<sup>th</sup> century creation of Athens' first 'law code' by Drakon.

<sup>605</sup> *SEG* 30.380 (see pp.227-29)

<sup>606</sup> Thomas, R. (1992, p. 61)

number of *poleis* in judicial contexts, and this early reference suggests that such officials were being used in *poleis* from before the appearance of legal writing. We have little evidence of their precise function, but their title appears to suggest that their role was associated with the act of remembering and was thus much in keeping with the needs of an oral legal culture. The text from Halikarnassos'<sup>607</sup> use of the enigmatic phrase 'what the *mnēmōnes* know shall be binding' suggests that they had considerable authority to determine the facts of the case and it therefore seems likely that their role involved having a detailed knowledge of the community's legal histories and customs as well as their laws. Likewise at Gortyn *mnāmōnes* seem to have worked in tandem with judges and to have a role in formalised processes, acting as witnesses (col. IX 31ff.) and swearing oaths (col. IX 10ff., 38, 53);<sup>608</sup> functions which were already integral to the dispute resolutions found in hexameter poetry. Their appearance in a number of written texts across a significant period of time<sup>609</sup> also suggests that this function spanned the gap between the fully oral legal world and one that began to utilise writing, and the association of their title with the act of remembering suggests that they were recording information about trials, perhaps using varying combinations of written text and memory to do so.<sup>610</sup>

Furthermore, while scribes<sup>611</sup> were an integral part of the process of publishing laws and decrees and of recording significant events and cases, they do not seem to have formed the kind of 'scribal class' that we find in the Near East or the professional 'jurists' of Roman law. There is little evidence of professionalism in the law in Greek *poleis* and, as we shall see, it has none of the linguistic trappings of a specialist discipline. The scribes attested in our surviving decrees seem to have been given sole charge of writing rules as and when the *polis*' representative bodies decided on them, but do not appear to have any special role in drafting

---

<sup>607</sup> Appendix 3 §4 (see pp.165-68)

<sup>608</sup> Thomas, R. (1996, pp. 20-21), Davies, J. K. (1996, p.33), Lanni, A. (2004, p.165)

<sup>609</sup> Cf. The references in the Tiryns text (7<sup>th</sup> century) and in Gortyn (*IC IV 72*) and Halikarnassos (Appendix 3 §4) (5<sup>th</sup> century)

<sup>610</sup> Thomas, R. (1996, pp.19-20), Gagarin, M. & Perlman, P. J. (2016, pp.74-75), Gagarin, M. (1986, p.131), Robb, K. (1991, p.643) *Pol.* 1321b34-40 Cf. the inscription detailing the rights and responsibilities of the scribe Spensithios (Appendix 3 §8 see pp.208-10) which distinguishes between two facets of his job: to write (*poinikazen*) and remember (*mnāmōneuwen*) the proceedings of events, both sacred and secular for the rest of time. This suggests that it combined the writing down of decrees with this earlier function of being tasked with remembering important legal details on the *polis*' behalf much like the role implicit in the title of the *mnēmōnes*. Cf. also the roles of officially recognised experts such as *mnēmōnes* or the Athenian *exēgētai* see pp.215-18

<sup>611</sup> Cf. Spensithios (Appendix 3 §8) and Patrias (*Nomima I.23*) See pp.216-17

or proposing legislation and, while there were state officials who could have been consulted on the law,<sup>612</sup> their role seems to have been more to help people navigate the law than to create new, derivative provisions. As we shall see, the wide-reaching cultural impact of written law as a source of moral education and *polis* identity saw logographers and philosophers engaging with the motivations behind the law, and some even went as far as considering novel or utopian legal changes.<sup>613</sup> However, there is no evidence to suggest that these practices were in any way products of specialist or professional<sup>614</sup> discourse, but was as much a part of the Greek *poleis*' culture of normative debate and discussion as the discourse of *skoliai* and *itheiai dikai* had been in the 8<sup>th</sup> and 7<sup>th</sup> centuries.

### *Language*

As we have seen in the previous two chapters, written laws were formulated and propagated using existing language, and much of the legal syntax that facilitates the clear articulation of procedures, the organisation of compilations of rules, and the principles of divine justice that underpin legislation have their parallels in earlier poetic, rhetorical and storytelling traditions. The lack of professional lawyers and jurists in Greek *poleis* meant that legal language seems to have differed little from the existing normative diction of their citizens and benefitted from its clarity, precision and authority.<sup>615</sup> Greek *nomoi* are clearly products of their time and place, economically addressing the concerns of their day in the language of the citizens of a given *polis* at a given time,<sup>616</sup> and the fact that the terms of written laws appear to have required little clarification suggests that legislators were superimposing written law over understood frameworks of institutions, rules and modes of communication.<sup>617</sup>

While the act of writing rules down facilitated the recording and development of consistent, complex procedures, the language of law appears to have remained largely

---

<sup>612</sup> Such as the Athenian *exēgētai* See pp.217-18

<sup>613</sup> Cf. Plato in the *Republic* and *Laws* the latter of which is critiqued by Aristotle in *Pol.*1264b26-1266a30 alongside the ideal 'constitutions' of Phaleas (1266a31-1267b21) and Hippodamus (1267b22-1269a28)

<sup>614</sup> Gagarin, M. (2008, p.70), Lanni, A. (2004, pp.160-66), Foxhall, L. & Lewis, A. D. E. (1996, pp.6-7), Todd, S. C. (1996, pp.106-31), Carey, C. (1994, pp.178-79; 2004, pp.112-13), Millett, P. (1990, p.180), Humphreys, S. C. (1978, pp.137-42; 1986, p.58),

<sup>615</sup> Willi, A. (2007, pp.56-69), Robb, K. (1991, p.642), Carey, C. (1994, pp.178-79), Gagarin, M. (2008, p.2), Lanni, A. (2006, p.25), Kapparis, K. (2019, pp.33-34)

<sup>616</sup> Sealey, R. (1994, p.52-58), Gagarin, M. (1981, p.153)

<sup>617</sup> Thomas, R. (2005, p.54)

unaffected, relying on the same syntactical structures and sources of authority, and using terminology that had evolved little from that found in Homer and Hesiod. Many key ideas therefore continued to be articulated using diffuse semantic fields<sup>618</sup> or simple root words and their morphological variants, while the terms for institutions, procedures and officials that appear in legal inscriptions seem to have been sufficiently comprehensible without further clarification in the texts of the laws themselves.<sup>619</sup> This lack of any definitions or qualifications of key concepts in written law suggests, as Thomas has argued, that the normative vocabulary of law was readily understood at the time of writing by those who needed to use it.<sup>620</sup>

This is also reflected in the vocabulary of laws where we see little in the way of new coinages, technical terms or ‘legal definitions’ emerging despite the social, structural and legislative changes that were taking place in the Archaic and Classical periods. While regional variations in the formulations used did develop and some changes in language occurred over time, there remained remarkable continuity in Greek normative vocabulary, as the terms for offences, descriptors to qualify different crimes, legal actions and judicial procedures<sup>621</sup> seem to have been drawn primarily from the existing normative language of the ordinary citizen. For instance, when dealing with sexual misconduct, we see a range of terms and separate penalties for ‘rape’, ‘seduction’ and ‘adultery’,<sup>622</sup> yet even the most prescriptive texts offer little detail defining how they were distinguished from one another, suggesting that these terms were sufficiently familiar to audiences that they required no further clarification.<sup>623</sup> Along with the matters that concerned Homer and Hesiod, we also see significant continuity in Greek ‘legal’ terminology with words for offences like *moicheia* appearing in Gortyn, Athens and elsewhere,<sup>624</sup> the 6<sup>th</sup> century Lokrian inscription’s reference

---

<sup>618</sup> Thomas, R. (1992, pp.134-35) *see pp.175-78*

<sup>619</sup> Willi, A. (2007, pp.72-79)

<sup>620</sup> Thomas, R. (1996, pp.25-6; 2005, p.57), Carey, C. (1994, pp.179-80), Philips, D. (2013, pp.vii-viii), Osborne, R. (1996, p.187), Wohl, V. (2010, pp.29-30)

<sup>621</sup> It is this terminology that Willi (2007 pp.51-53) describes as the ‘language’ of a discipline, whereas the syntax is what he terms ‘register’. For the purposes of this thesis, however, the syntax is a vitally important part of how laws and norms are developed and articulated and so, alongside terminology, forms an essential ingredient of legal language.

<sup>622</sup> *See p.191*

<sup>623</sup> Kristensen, K. R. (2008, pp.5-9)

<sup>624</sup> Cf. Hipponax, fr.31W Carey, C. (2013, p.36)

to the *andrephonikon tethmon* (homicide law),<sup>625</sup> the use of *apoteisei* to refer to the owing of money as compensation in the text from Eltynia,<sup>626</sup> or the Gortyn law code's use of the term *opyiein* for 'to marry'.<sup>627</sup>

The ability of such consistent, everyday vocabulary to achieve a sufficiently high level of precision for use in law can be seen in the ways that descriptors could be used to mark key distinctions or the use of subtle inflections in the Greek language to create terms for legal processes or when detailing the roles and responsibilities of different legal actors without the need for legal definitions. The Gortyn law code distinguishes *oipen* (have intercourse)<sup>628</sup> from *daman* (seduce)<sup>629</sup> but also acknowledges that both acts can be done without consent with the qualifying term *kartei* (by force)<sup>630</sup> showing a capacity for terms to be nuanced to reflect the intent, means and relative severity of different sexual transgressions. However, this use of qualifying adverbs to indicate normative distinctions is nothing new<sup>631</sup> and it offers no clarification of whose consent is required or to whom one might be offering violence, suggesting that unwritten expectations governed such key details.

Another tool for creating clear and precise legislation without resorting to technical terms with specific definitions was the use of the inflections inherent in the Greek language to mark out legal provisions, concepts and actors. This can be seen in the use of the suffix *-sis* to create abstract nouns such as *anpansis* (adoption) in the Gortyn law code<sup>632</sup> or the word for

---

<sup>625</sup> Appendix 3 §3 *androphonos* is a common epithet in Homer (used of Hector eleven times cf. *Il.*1.242, 24.724, Ares (4.441) and the hands of Achilles cf. *Il.*18.317, 23.18, 24.479) and, while it is typically used to refer to prowess in battle, it is also used to refer to a poison at *Od.*1.261 and we can already see the use of the root word *phonos* to mean 'murder' in *Il.*9.632 and the way that *anēr* (man) is occasionally used both separately (cf. *Il.*18.499) and as a compound (cf. *androktasiēs* in *Il.*23.86) to qualify a killing as 'murder'.

<sup>626</sup> Cf. *Il.*1.128, 3.286 (= 359), 9.632-36, *Od.*2.132 cf. *Il.*17.34, *Od.*8.348 & 356

<sup>627</sup> *IC IV* 72.3.54-55, 4.4, 7.1, 7.15-9.1, cf. *Il.*8.304, 13.379, 13.429, 14.268, 16.178, 18.383, *Od.*2.207, 2.336, 4.798, 6.63, 15.21, 16.386, *Th.*819 *SH.*356. The term also seems to have been used in Athens' early legislation cf. Gal. *Linguarum Hippokratidis Explicatio, prooemium* (xix. 66 Kuhn) Leão, D. F. & Rhodes, P. J. (2015, pp.70-71, 89-91) see p.186

<sup>628</sup> *IC IV* 72.2.3, 15

<sup>629</sup> *IC IV* 72.2.11-13

<sup>630</sup> *IC IV* 72.3ff. Describes the penalties for rape (*kartei oipen*) which are distinct from those for attempting a sex act with someone (*epipeiretai oipen* – *IC IV* 72.2.15). Likewise the code prescribes penalties for forcible seduction with slaves (*kartei damasaito* – *IC IV* 72.2.11-15).

<sup>631</sup> Cf. The Homeric use of the word *biaios* at *Od.*22.37 to suggest the forcible crossing of sexual boundaries. The formula *kartei kai bie eikon* is also twice used by Odysseus to qualify the actions of his false persona as inappropriate cf. *Od.*13.143, 18.139.

<sup>632</sup> *IC IV* 72.10.33

divorce (*apopempsis*)<sup>633</sup> in Attic legal diction<sup>634</sup> enabling key procedures to be identified within more complex collections and sequences of legislation. Likewise, the use of different voices of the participle to define different legal actors such as *ampanomenos* ‘the adopter’ and *anpanton* ‘the adoptee’ in Gortyn’s adoption legislation, the Athenian use of *ho boulomenos* when defining who can bring a *graphē* or the Drierian *omotai* suggest a use of simple terminology where the subtleties of Greek accidentence produce clear and readily applicable legislation. This suggests that the language of legislation was not in any sense ‘technical’, but rather composed of terms that were generally understood and that the necessary precision could be achieved through the Greek language’s inherent morphological and syntactical flexibility.<sup>635</sup>

One of the consequences of the use of such ordinary language in composing written law was that writing could fossilise terms even after they had fallen out of common use, a feature which appears to have meant that over time orators occasionally had to explain or translate terms from earlier legislation.<sup>636</sup> Lysias in his speech *Against Theomnestus* offers a number of *glōssai* for terms found in legislation read out in court,<sup>637</sup> perhaps attacking his opponent’s level of education, but also acknowledging the fact that these rules had retained the language in use at the time of writing.

Νόμος – ‘ὄσαι δὲ πεφασμένως πολοῦνται,’ καὶ  
 Νόμος – ‘οἰκῆος καὶ βλάβης τὴν διπλὴν’ εἶναι ὀφείλειν.

προσέχετε τὸν νοῦν. τὸ μὲν πεφασμένως ἐστὶ φανερώς, πολεῖσθαι δὲ βαδίζειν, τὸ δὲ οἰκῆος θεράποντος. πολλὰ δὲ τοιαῦτα καὶ ἄλλα ἐστίν, ὧ ἄνδρες δικασταί. ἀλλ’ εἰ μὴ σιδηροῦς ἐστίν, οἶομαι αὐτὸν ἔννουν γεγονέναι ὅτι τὰ μὲν πράγματα ταῦτά ἐστι νῦν τε καὶ πάλαι, τῶν δὲ ὀνομάτων ἐνίοις οὐ τοῖς αὐτοῖς χρώμεθα νῦν τε καὶ πρότερον. δηλώσει δέ: οἰχίσηται γὰρ ἀπιῶν ἀπὸ τοῦ βήματος σιωπῆ.

<sup>633</sup> Dem.59.59

<sup>634</sup> Willi, A. (2007, pp.73-77) While this formation appears to suggest a systematic terminology (cf. Humphreys, S. C. 1978, pp.205-6), it is neither a product of written legislation, nor is it specialist enough or sufficiently consistently used to constitute a ‘technical’ language.

<sup>635</sup> Willi, A. (2007, pp.60, 94), Davies, J. K. (1996, p.42), Cohen, D. (1990, pp.152-55)

<sup>636</sup> Ford, A. (1999, pp.239-40, 254-55), Kapparis, K. (2019, pp.33-34)

<sup>637</sup> Lys. 10.16-20



*Law – ‘All women who promenade overtly,’ and  
Law – ‘for hurt to a valet the redress shall be double.’*

*Pay attention: “overtly” (pephasmenos) is “openly,” (phaneros) “promenade” (poleisthai) is “walk about,” (badizein) and a “valet” (oikeos) is a “servant.” (therapontos). There are many other such examples, gentlemen. But if his head is not made of iron, I suppose he has realised that things are the same now as they were of old, but that in some cases we do not use the same terms now as we did before.<sup>638</sup>*

While Lysias updates the language of these older laws, he insists that the rules themselves have remained unchanged even as the language has developed around it. Galen’s discussion of a fragment from Aristophanes’ *Banqueters*<sup>639</sup> addresses the problem directly, where the need to gloss Homeric nautical terms is compared with the lines in the play where the old man challenges his son to explain the meanings of Solon’s terms for ‘witnesses’ (*idyioi*) and ‘to marry’ (*opyiein*),<sup>640</sup> suggesting that these terms were not only opaque to readers in the 2<sup>nd</sup> century AD,<sup>641</sup> but had already fallen out of everyday use in Aristophanes’ time.<sup>642</sup> This suggests that law was both a product of and a yardstick for normative discourse, but that the language of this discourse could evolve independently from laws once they were written down.

This could occasionally lead to some confusing archaisms as earlier legislation, with its, at times, antiquated terminology, was conserved in Athenian legal culture but viewed through an active and evolving normative discourse. This can be seen in two further *glōssai* in Lysias 10 where the differences in terminology between fourth century parlance and that found in legislation as much as two centuries older could have meant that the law could be seriously misinterpreted.

---

<sup>638</sup> Lys.10.19-20

<sup>639</sup> Gal. *Linguarum Hippokratidis Explicatio, prooemium* (xix. 66 Kuhn) Leão, D. F. & Rhodes, P. J. (2015, pp.70-71, 89-91)

<sup>640</sup> A term also found in Cretan marriage legislation (cf. Gagarin, M. & Perlman, P. J. 2016, p.89)

<sup>641</sup> Several references to Solon’s terms in late antique lexicographers suggest that they required clarification for later audiences. Cf. Phot. ι 36 Theodoridis; Eustathius *ad Hom. Il.XVIII*. 501 (1158. 23); *Anecd. Becc.* i.242.19-22, Hesychius β 466 Latte *et al.* Leão, D. F. & Rhodes, P. J. (2015, pp. 70-73)

<sup>642</sup> Willi, A. (2007, p.71)

Νόμος - ἐπεγγυᾶν δ' ἐπιορκήσαντα τὸν Ἀπόλλω. δεδιότα δὲ δίκης ἔνεκα δρασκάζειν.

τοῦτο τὸ ἐπιορκήσαντα ὁμόσαντά ἐστι, τό τε δρασκάζειν, ὃ νῦν ἀποδιδράσκειν ὀνομάζομεν.

*Law - He shall vow by Apollo and give security. If he dreads the course of justice, let him flee.*

*Here to “vow” (epiorkesanta) is to “swear,” (omosanta) and “flee” (draskazein) is what we now call “run away.” (apodidraskein)<sup>643</sup>*

Here, the ambiguity of the term *epiorkein*, which most commonly means ‘to swear falsely’, but here, as Lysias explains, must have meant ‘to swear’ in the context of a law instructing someone to take an oath to Apollo. Moreover, the lack of definition and the assumptions behind legislation meant that it might be necessary to clarify some of the less specific terminology of these earlier rules.

Νόμος - τὸ ἀργύριον στάσιμον εἶναι ἐφ' ὅποσῳ ἂν βούληται ὁ δανείζων.

τὸ στάσιμον τοῦτό ἐστιν, ὃ βέλτιστε, οὐ ζυγῶ ἰσάναι ἀλλὰ τόκον πράττεσθαι ὅποσον ἂν βούληται.

*Law - Money shall be fixed at whatever rate the lender (ho daneizōn) may choose.*

*‘Fixed’ (stasimon) here, my fine fellow, is not a case of setting the balance (zygō), but of drawing interest (tokon) to however much one wishes.<sup>644</sup>*

The exact meaning of ‘fixed money’ in the original legislation appears to have become obscured over time, prompting Lysias to offer this interpretation, translating the terms of the original law into the understood diction of his contemporaries. While it is possible that this reading of the term *stasimon* is Lysias’ invention, he was nevertheless a participant in an oral

---

<sup>643</sup> Lys.10.17

<sup>644</sup> Lys.10.18

discourse of interpreting the law which existed and grew up alongside written *nomoi*.<sup>645</sup> The need for this suggests that, while such archaic language was being preserved and cited, the main mode for communicating rules remained the evolving normative diction of the ordinary citizen.

### *Mechanisms, Institutions and Penology*

The methods of resolving disputes and the types of penalties available to Archaic Greek *poleis* were also little different from those we find in earlier judicial procedures, suggesting that the penology of written legislation was informed by existing forms of restitution and harnessed the normative drivers of family honour<sup>646</sup> or financial incentives<sup>647</sup> to ensure that legislation was enforced. As we have seen, early hexameter poets were aware of a variety of methods for settling cases – exile, self-help and negotiated *poine* – and had a number of traditional modes for expressing what was and was not acceptable.<sup>648</sup> These mechanisms continued to be the main ones available to *poleis* as they began to create written law, which either explicitly assimilated them into their procedures and penology, sanctioned them as non-legal means or left gaps which imply the existence of other normative processes.

As written legislation enabled the *polis* to become a locus for norms that would restrict and direct the actions of litigants, legal texts nevertheless continued to utilise traditional self-help procedures, directing and assimilating them through their provisions. We find rules limiting the actions of those wishing to seize or violently take revenge on an offender, but which nevertheless acknowledge that these were a means by which retribution could legally be taken and which continued to serve a useful purpose in the judicial processes of Archaic and Classical *poleis*.<sup>649</sup> Likewise, laws specifying punishments that were not fines or withdrawals of rights are exceedingly rare, suggesting that arrest, imprisonment and corporal punishments were often understood to be exacted by private individuals where the law did not otherwise forbid it.<sup>650</sup> This suggests that while the law was managing the actions of litigants so that responses to offences did not exceed the limits set out by the *polis* it was

---

<sup>645</sup> Ford, A. (1999, pp.39-40)

<sup>646</sup> Lanni, A. (2006, pp.28-29 ; 2016, pp.47-55), Humphreys, S. C. (1986, pp.57-91)

<sup>647</sup> Hall, M. D. (1996, pp.75-78)

<sup>648</sup> See Chapters 1 & 2 Gagarin, M. (1981, pp.10-13), Posner, R. A. (1979, p.31) cf. *Od.*15.272-78, *Il.*9.632-36, 18.497-508

<sup>649</sup> Carey, C. (2018, pp.75-78), Cf. Gortyn laws on lawful and unlawful seizure *IC IV* 72.1.1–2.1 Appendix 3 §5, Drakon's Homicide law (Appendix 3 §2) ll.26-29

<sup>650</sup> Hall, M. D. (1996, pp.78-79)

also using what may have been customary practices to enforce its rules, whether explicitly incorporating them into the texts of laws, regulating them or making space for them.

Drakon's homicide law<sup>651</sup> in Athens restricted the options available for the punishment of murderers and directed litigation,<sup>652</sup> but also appears to have left space for existing responses to murder which are little different from Homeric methods for resolving homicide cases. The basic penalty for unwilling homicides was exile, rendering them without legal protection from violence in the *polis*, but the capacity for groups of individuals to offer pardon suggests that reprieve by offering appropriate compensation was possible and thus that the essence of traditional murder resolutions of the type observed in the Homeric epics remained at the heart of Athens' homicide law in the time of Drakon.<sup>653</sup> Likewise, the way the text also considers those who kill a murderer living in exile as murderers themselves<sup>654</sup> also suggests that self-help was an expected response to homicide that the law attempts to keep within certain limits. The amount that the text leaves implicit about the reasons why a pardon might be granted or of what a victim's relatives might do to a murderer inside the territory of Athens, suggests that these aspects were left to the family's discretion, which may have been guided by principles and procedures that had long been part of Athens' normative traditions, but which may never have been written down. Likewise, while a number of texts prescribe *poinai* for offences, very few specify to whom they were to be given, suggesting that such procedural details were generally understood.<sup>655</sup>

A similar interest in regulating existing procedures is implicit in the Gortyn law code's opening section which forbids the seizure of an individual *πρὸ δίκης* 'before trial',<sup>656</sup> but it does appear to have been permitted for an individual to lay hand on someone if he is deemed to be justified in doing so by a court of law,<sup>657</sup> much as voluntary prosecutions by private citizens still remained the primary means of enforcing the law in Athens and it was

---

<sup>651</sup> Appendix 3 §2

<sup>652</sup> See pp.218-26

<sup>653</sup> Gagarin, M. (1981, p.19)

<sup>654</sup> ll.26-29

<sup>655</sup> A rare exception to this is *GP* Elt 2 (Appendix 3 §7) which does specify who should make restitution and in line 3, it requires that one of the fines is to be claimed by the *kosmos* on the *polis*' behalf. Cf. Also Appendix 3 §4 ll.32-37 which requires that the proceeds from confiscated property of one who proposes to overturn the law should be consecrated to Apollo.

<sup>656</sup> *IC* IV.72.col.1.2-3, Gagarin, M. (2004, p.178) cf. also Solon's law to this effect Leão, D. F. & Rhodes, P. J. (2015, p.67), *Lib. Decl.* XIX 7

<sup>657</sup> col.I.56-II.2

usually up to a successful prosecutor to collect his own dues.<sup>658</sup> The way one could find oneself at the mercy of another in the course of a dispute can be seen in a 6<sup>th</sup> century letter from a certain Achillodorus to his son, claiming that he is being held against his will for theft or perhaps defaulting on a loan and asking his son to plead his innocence.<sup>659</sup> This suggests that the act of summary seizure or enslavement was a common practice which it seems early *poleis* were keen to regulate, legislating to protect citizens and sanctioning their use of violence, but also channelling their behaviour so that they did not wrongfully imprison anybody or take away freedom, property or life without trial.<sup>660</sup>

This use of writing to fix the shape of self-help processes and regulate them can also be seen both in early Athenian laws quoted in Demosthenes' prosecution of Aristocrates which seem to restrict such methods in much the same way as the Gortynian prohibition against seizure before trial,<sup>661</sup> while still acknowledging that it has an important function in the pursuit of justice.

ἐάν τις βιαίῳ θανάτῳ ἀποθάνῃ, ὑπὲρ τούτου τοῖς προσήκουσιν εἶναι τὰς ἀνδροληψίας, ἕως ἂν ἡ δίκας τοῦ φόνου ὑπόσχῳσιν ἢ τοὺς ἀποκτείναντας ἐκδῶσι. τὴν δὲ ἀνδροληψίαν εἶναι μέχρι τριῶν, πλεον δὲ μή.

*If someone should suffer a violent death, forcible seizure (androlēpsia) shall be available to his kin (prosēkousin) until they have brought a case for the murder or give up the ones who have carried out the killing. And the power of forcible seizure shall extend to three men and no more.*<sup>662</sup>

Similarly, Demosthenes invokes legislation 'as it says on the *axōn*' that allows either a summary execution or charging of a murderer but not any other harm or the extraction of a *poine* without trial,<sup>663</sup> and also twice calls on Drakon's requirement that those who have been

---

<sup>658</sup> Todd, S. C. (1993, pp.144-45), Lanni, A. (2016, pp.53-54) cf. Dem.21. 30, 31, 47.21-66, 53.14-15

<sup>659</sup> SEG 26.845, Colvin, S. C. (2007, pp.115-18)

<sup>660</sup> Cf. Also the procedures described for providing evidence to support lawful killing of a *moichos* below.

<sup>661</sup> Appendix 3 §5, Dem.23.28, 37, 44, 55, 69, 72, 82; cf. 20.158 Leão, D. F. & Rhodes, P. J. (2015, pp.24-29)

<sup>662</sup> Dem.23.82

<sup>663</sup> Dem.23.28

exiled should not be pursued beyond the bounds of Attica.<sup>664</sup> Therefore, written legislation seems to have continued to integrate self-help into its procedures, recognising its role in achieving redress while at the same time directing and limiting the use of force by citizens.<sup>665</sup>

The assimilation of such procedures into written laws was not done uniformly across *poleis* suggesting that they were using similar basic procedures but legislating for them in ways that accorded with their needs and would have significant effects on the ways such procedures were regulated. Athens and Gortyn had different approaches to punishing *moicheia*, but their laws nevertheless both retained earlier processes for ensuring that justice was served in the proper manner, which were not dissimilar to the one that appears in *Odyssey* 8.<sup>666</sup> This suggests that their methods of resolution for adultery were in use long before such rules were written down and that traditional procedures<sup>667</sup> were still being sanctioned and guided in the 5<sup>th</sup> and 4<sup>th</sup> centuries by written legislation. The process for exacting a punishment from an adulterer in Athens can be seen in Lysias' '*On the Murder of Eratosthenes*' where the defendant makes the case that the murder was justified because the victim was caught *in flagrante* with the defendant's wife. The speech describes how the cuckold has to catch the adulterer in the act, summon his neighbours as witnesses and perform his execution, and his use of this as a defence against a homicide charge suggests that this was an accepted means of demonstrating that due process had been followed in exacting punishment for adultery.<sup>668</sup>

In Demosthenes' *Against Neaira* we can also see the integration of this procedure into Athenian court processes when Stephanos' abuse of Athenian adultery legislation to extort money from Epainetos is prosecuted as an unlawful seizure. The mechanism for challenging this offers a provision for the possibility that the one seized *was* in fact found to be an adulterer that suggests that it was also integrating a similar process to that described by Lysias into the *polis*' laws, penalties and court procedures:

---

<sup>664</sup> Dem.23.37, 44 cf. Appendix 3 §2 ll.26-29

<sup>665</sup> Lanni, A. (2016, pp.1-3), Carey, C. (2018, pp.75-78), Kapparis, K. (2019, pp.29-30)

<sup>666</sup> *Od.*8.266-366 *see pp.*77-79 Cf. Hipponax, fr.31W which also refers to the act of 'taking someone as a *moichos*' suggesting that the practice was also known in the Ionian world. Carey, C. (2013, p.36)

<sup>667</sup> Cohen, D. (1990, p.148)

<sup>668</sup> Lys. 1.23-27. A similar procedure of summoning witnesses is also described by Antiphon (1.29-30) for those who are dying as a result of suspected foul play and wish to denounce their killer (cf. Dem.54.28). The provision in Dem. 59.66 also suggests that Athenian courts could use sanctioned self-help as a penalty for certain crimes, with the court effectively acting as witnesses when the cuckold 'in the presence of the court may inflict upon him, without a knife, whatever treatment he pleases, as upon an adulterer.'

ἐὰν δὲ δόξη μοιχὸς εἶναι, παραδοῦναι αὐτὸν κελεύει τοὺς ἐγγυητὰς τῷ ἐλόντι, ἐπὶ δὲ τοῦ δικαστηρίου ἄνευ ἐγχειριδίου χρῆσθαι ὅ τι ἂν βουληθῆ, ὡς μοιχῶ ὄντι.

*If it appears that he [the plaintiff] was an adulterer, the law commands his guarantors to hand him over to the one who caught him, and he in the presence of the court may inflict upon him, without a knife, whatever treatment he pleases, as upon an adulterer.*<sup>669</sup>

The law cited here is prosecuted by means of a *graphē* brought before the *thesmothetai* and thus must have been enacted after Solon's 6<sup>th</sup> century introduction of the *graphē*. This demonstrates the continued integration of this type of procedure, with the court acting as witnesses and the punishment being administered through an act of sanctioned self-help, into the written laws of Athens long after the earliest legal texts began to appear. Similarly, the Gortyn law code, while not permitting the summary execution of an adulterer, describes an almost identical process of capture, witnesses and ransom, suggesting that this practice of self-help was also known in Crete and was being assimilated into written legislation in this *polis* as well.<sup>670</sup> The antiquity and complexity of this process with its reliance on procedural witnesses and validated self-help suggests that the sophisticated legal procedures of the type seen in Chapter 1 were already in use in *poleis* before written law, and continued to be assimilated and adapted by the legislators of the Archaic *poleis*.

#### *The limited scope of Written law*

Just as Greek legislators left space for or incorporated existing processes, they also seem never to have aimed at comprehensively covering all areas where legal action might ensue, only creating laws for particularly important, complex or controversial issues.<sup>671</sup> Laws

---

<sup>669</sup> Dem.59.66

<sup>670</sup> *IC IV.72.2.20-45* Carey, C. (2004, pp.120-24), Sealey, R. (1994, pp.125-26), Hall, M. D. (1996, pp.74-75). Robb (1991, pp.647-62) in particular has argued that the uses of witnesses in this passage to show the correct procedure has been followed, and the use of such 'procedural witnesses' more generally, in the formal acts of documenting issues like the status of slaves, the passing on of inheritances, suggests the continuation of an 'oral habit', which pervaded archaic Greek legal systems, with Athens only legislating to make written documents the norm in the 4<sup>th</sup> century.

<sup>671</sup> Thomas, R. (2005, p.54), Kapparis, K. (2019, pp.32-34)

were inscribed to address specific problems<sup>672</sup> and, while they could be very detailed and form wide-ranging compilations, Greek lawmakers do not appear to have published all legal rules in this way or with the same level of complexity. Several notable absences and ambiguities in key areas suggest the existence of shared principles which provided the subtextual expectations necessary to understand and apply such legislation,<sup>673</sup> or where ‘legal’ behaviour was governed by existing unwritten customs.

Commercial activities, contracts, marriage, divorce and adoption all seem to have been concerns that could bring about litigious behaviour, but nevertheless functioned with very limited interference from the laws of the *poleis*, even though they pertained to binding normative bonds between parties and could be used as evidence in court.<sup>674</sup> Likewise, crimes that might have brought *miasma* or divine wrath like swearing false oaths, incest or the use and abuse of magic appear to have been either left to the gods – unless they posed a direct risk to the *polis* – or were prosecuted under other pieces of relevant legislation. The scope of legislation in these areas therefore seems largely to be confined to validating existing practice or the resolution of the most serious disputes that might arise from them: typically where they concerned property, citizenship or the correct performance of religious rituals. This suggests that the functioning of these normative practices was felt not to merit interference from the laws of the *polis* unless it resulted in a threat to community stability.

For the most part Athenian contract law remained relatively simple,<sup>675</sup> consisting of a requirement that what was agreed to should be binding<sup>676</sup> which only appears to have been enforced in the courts when one half of the bargain was fulfilled and the other was not, and as such was viewed not as a ‘breach of contract’ but as recovery of a debt pursued by means of a *dikē blabēs* (‘suit for damages’).<sup>677</sup> Contracts themselves were formulated according to the wishes of the two parties and probably relied on combinations of oaths, witnesses and ties of familiarity to encourage agreements to be followed through, much as they always had

---

<sup>672</sup> Kapparis, K. (2019, p.251)

<sup>673</sup> Sealey, R. (1994, pp.52, 122), Kristensen, K. R. (2008, pp.1-9)

<sup>674</sup> Cf. Dem.48, 59.45-46, Is.5.28-30, Carawan, E. M. (2007, pp.77-80), Millett, P. (1990, pp.178-79)

<sup>675</sup> Millett, P. (1990, pp.172-73) points out that a lot of the complexity in modern English law on sale is in defining the roles of different legal actors, something that Greek laws tend not to do.

<sup>676</sup> Hyp. *Athenogenes* 13, Dem.42.12, 47.77, 56.2, Dein.3.4, Plat. *Symp.* 196c

<sup>677</sup> Carawan, E. M. (2007, pp.73-77), Millett, P. (1990, pp.174-79), Sealey, R. (1994, pp.62-63)



done.<sup>678</sup> Likewise the practice of *eranos* loans, probably only secured by ties of association or kinship highlights the often personal basis on which such agreements were made and enforced,<sup>679</sup> and more formal loans were very much reliant on community pressure and self help as it was probably still up to creditors to physically take defaulters to court and extract their dues if the verdict was in their favour.<sup>680</sup> Even when contracts began to incorporate written documents in the latter part of the 5<sup>th</sup> century, this was not a wholesale change, with oral agreements and witnesses still playing a vital role and contract law did not develop very far as a result of this incorporation of evidentiary written text.<sup>681</sup> Nor is there any evidence to suggest that the emergence of written contracts was driven by legal writing: very few laws even make reference to contracts and none before the fourth century,<sup>682</sup> suggesting that written legislation was responding to the proliferation of written texts and not the other way around.

Written law also had very little to say on the procedures for getting married or divorced and the sorts of requirements for such unions that concerned written laws appear to have been more to do with the relative status of bride and groom than with regulating the processes themselves. When it came to marriage and divorce, the law appears to have been more centred around disputes that might have arisen over divorces, dowries, status and inheritance. Both Athens and Gortyn had laws for the status of offspring<sup>683</sup> or disputes that

---

<sup>678</sup> Carawan, E. M. (2007, pp.74-80), Lanni, A. (2006, pp.157-59), Millett, P. (1990, pp.178-79), Gagarin, M. (1986, pp.188-89)

<sup>679</sup> Philips, D. (2013, p.373), Lanni, A. (2006, pp.21-22; 2016, pp.26-27, 45-46), Carawan, E. M. (2007, p.75), Millett, P. (1990, pp.183-84)

<sup>680</sup> Cf. Dem. 44, Lanni, A. (2006, p.49), Hall, M. D. (1996, p.75)

<sup>681</sup> It was not until the start of the 4<sup>th</sup> century with the introduction of reforms formalising the trial process that we see a mechanism for ensuring that all documentary evidence was declared by having it all sealed in jars before the trial began, and it was not until 389 BCE that all evidence was required to be submitted in this way. (*Ath. Pol.* 53, Sealey, R. (1994, pp.137-38)).

<sup>682</sup> Lanni, A. (2006, pp.157-59), Thomas, R. (1989, pp.40-45)

<sup>683</sup> Cf. *IC IV* 6.56-7.10, Dem.57.51-53, Dem.46.18 requires the consent of male relatives for *engyēsis* so that offspring can be legitimate. We also find Athenian rules that prohibit marriage between citizens and foreigners Dem.59.16-17 sets out penalties for *graphē xenias* a *xenos* cohabiting with a citizen woman (the man is sold into slavery and 1/3 of the proceeds go to the prosecutor) while a citizen cohabiting with a *xenē* has to pay a 1000 drachma fine, 51-53 suggests that someone illegitimate or born to a foreigner could not inherit, while 38 suggests Neaera hoped Stephanus would help her children fraudulently claim to be citizens.

could arise over the division of property in the event of the marriage being terminated,<sup>684</sup> suggesting that these were seen to be particular causes of dispute in both *poleis*. However they both said very little in their legislation about the marriage procedure itself, suggesting that marriages were probably just agreed between the two families, probably using traditional formulas and oaths to validate the union,<sup>685</sup> and that its legitimacy in the eyes of the law was only relevant for determining the status of any offspring or allocation of property. In both contracts and marriages, therefore, written law may have had a role in stipulating certain criteria that validated them legally, but may not in itself have been enough to seal such agreements formally.

---

<sup>684</sup> Cf. *IC IV 72.2.45-4.8*, *Is. 3.35-37*, *77-78*. Dowries appear to have been an especially thorny issue with concerns arising over their abuse as a means to hide one's wealth or the division of them when a marriage was terminated, and much of the procedural legislation around marriage is focused more on these than the marriage itself. The Athenian procedure of *engyēsis* required a groom on his betrothal to declare the value of the dowry (*proix*) which had to be kept separate from his own material goods, while the *dikē sitou* and *dikē proikos* provided mechanisms for divorcees to reclaim dowries with interest. (cf. *Dem.30-31*, *27.15-17*, *59.52* Menander *Dyskolos* 842-4, *Perikeiromene* 1013-5, MacDowell, D. M. (1978, pp.86-89), Carey, C. (2004, p.116), Sealey, R. (1994, pp.77-78)) Similarly in Gortyn, laws existed to separate a wife's property from her husband's (*IC IV 72.4.2-46*) with rules setting out what she is entitled to, (*IC IV 72.2.45-54*, *3.17-31*) how it is to be passed on at her death, (*IC IV 72.3.31-37*) and restricting gifts to female relatives, especially by debtors, (*IC IV 72.10.14-25*) suggesting that such restrictions were meant to prevent citizens from using dowries to hide their wealth. (Sealey, R. (1994, pp.79-81)). In cases of divorce we do see some significant differences in the level of regulation and involvement of judicial procedure between Athens and Gortyn. Gortyn's divorce laws focus very much on the allocation of property, but do seem to require a judge to determine who was at fault in order to follow the legal avenues available to him. (*IC IV 2.45-4.8*) At Athens, by contrast, divorce could be mutually agreed (Cf. *Is. 2.7-9*) or a man could assemble witnesses to an *ekpempsis* where he formally cast his wife out (*Lys.14.28*, *Dem. 41.3-4*, *30.15-17* cf.*59.53-55*, *59-63*, *82-84*) all without recourse to written law or the courts, though if a wife wished to divorce her husband, the process was tightly regulated and had to be filed with an Archon. (Cf. Hipparete's attempt to divorce Alcibiades *Andok. 4.13-14*, *Plu. Alcibiades* 8.4-6).

<sup>685</sup> Gagarin, M. & Perlman, P. J. (2016, pp.89-90), Philips, D. (2013, pp.145-46) A number of what appear to be marriage formulas attested in Menander *Periceiromene* 1013-15, *Dyskolos* 841-44, *Samia* 726-29, suggest that some kind of customary process did exist in Athens at least and it is very likely that similar forms of words were in use elsewhere. In the Gortyn law code, the verb *opyien* (to marry) is mentioned a few times, but only in relation to procedures stemming from marriage (cf. marriage with slaves *6.56-7.10*) or where marriage might be required (cf. in the case of heiresses *7.15-8.30*) rather than the marriage procedure itself. This stands in contrast with adoption where the procedures for adoption and annulment are *both* detailed in the law *see pp.168-72*, *220-22*

Oaths remained an integral part of the processes for ensuring the honesty of magistrates and litigants.<sup>686</sup> However, there is no positive evidence in our sources for the existence of sanctions in Greek legislation for breaking an oath *per se* even though other penalties are often stipulated to protect against the same eventualities as swearing oaths. At Athens, for example, there is no equivalent to ‘lying under oath’, though oaths could be sworn to strengthen a case<sup>687</sup> and the *dikē pseudomartyriōn* provided a means of prosecuting one who bore false witness, it was impossible to try someone for being an *epiorkos*, so these seem to have been separate safeguards working in tandem.<sup>688</sup> This is supported by the fact that women could risk divine wrath by swearing an oath in evidence, which did not carry a threat of *dikē pseudomartyriōn*, but could not act as witnesses directly owing to the impossibility of prosecuting them for doing so falsely.<sup>689</sup> At Gortyn, where oaths are commonly attested as a means for litigants to prove the strength of their case and for judges to validate their decisions, there is no evidence of penalties for swearing in bad faith, even in cases where at least one of the litigants swearing opposing oaths must have been committing perjury.<sup>690</sup> The fact that there are no penalties for false-swearing, despite the recognition that oaths could be sworn falsely or even ignored,<sup>691</sup> suggests that they could be left to the gods and were used in the hope that individuals would prefer to face the consequences of their actions than commit perjury. For most people this would probably have been sufficient reason not to lie under oath and the pressure of swearing in public, possibly before some who knew the truth, would probably have contributed to the disincentive.<sup>692</sup>

---

<sup>686</sup> Harris, E. M. (2004, p.24; 2006b, pp. 159-62), Mirhady, D. C. (2007, pp.52-55) Wohl, V. (2010 p.31) *Ath. Pol.* 7.1, 55.5, *Xen. Mem.* 1.1.18, *Lys.* 16.12

<sup>687</sup> Gagarin, M. (2007, pp.45-47)

<sup>688</sup> Todd, S. C. (1990, p.36)

<sup>689</sup> Todd, S. C. (1990 p.28)

<sup>690</sup> Parker, R. (2005a, p. 74) cf. Plato who raises this very objection in the case of Athenian evidentiary oaths in *Laws* 948d

<sup>691</sup> Parker, R. (2005a, pp.69-75)

<sup>692</sup> Parker, R. (2005a, p.70) cf. *Dem.*47.70 where the *exēgētai* warn that taking an oath (*diōmosei*) before prosecuting a trial on another’s behalf incurs significant risks from the curses called down on oneself, one’s wife and children, and that, if it leads to an acquittal, there is the danger of being branded an *epiorkos*. Likewise, *Antiphon* 5.15 (*See pp.*207-9) also suggests that the speaker expects that the prospect of falsely swearing an oath would deter most witnesses.

Similarly, while *poleis* occasionally took an interest in the pollution brought about as a result of homicide or improper behaviour at festivals,<sup>693</sup> not all crimes that might have brought *miasma* or divine retribution have left a record in our surviving legal texts, suggesting that the punishment for these may have been left up to the gods, kinship groups and neighbourhoods. For example, incest was viewed as abhorrent<sup>694</sup> and there were laws that specified how close kinship could be for individuals to marry,<sup>695</sup> but the act of sleeping with a relative was never criminalised and, while some forensic speeches use it to attack political opponents,<sup>696</sup> this is only to discredit them rather than the central charge. Likewise, while *asebeia* was legislated for in Athens, it is likely that the law lacked detail as to what actually constituted ‘impiety’, and thus, while there may well have been several offences that were typically prosecuted as *asebeia*, these may only have been understood and could have been open to interpretation.<sup>697</sup>

Despite very real concerns around the use of drugs, incantations, curses and binding spells, and the need to purify individuals from any *miasma*, legislation on the use of potions and spells is virtually non-existent.<sup>698</sup> Magic and poisoning were issues that concerned the courts of classical *poleis* and we do have evidence of trials at Athens that related to the use of drugs (*pharmaka*) and spells (*epoidai*) but these focus on whether there was intent to do harm (*blabē*) or dishonour the gods (*asebeia*), supporting the idea that there was no specific legislation against the use of magic itself and that prosecutors were using legislation for bodily harm or impiety in such cases.

The use of drugs was never criminalised in Athenian law: poisons could just as easily be medicines or love potions and so it was necessary to prove the intent behind their administration. This can be seen in Antiphon 1 which presents the case of two men who died

---

<sup>693</sup> See pp.227-32 For instance a 5<sup>th</sup> century inscription from Selinous prescribes a procedure for purifying an individual from persecution by vengeful spirits (*SEG* 43.630) and a 4<sup>th</sup> century inscription from Cyrene (*SEG* 9.72) phrased as an oracular pronouncement from Apollo lists a number of possible sources of *miasma* and things that can be done to mitigate this (Parker, R. 2004, pp.63-64; Colvin, S. C. 2007, pp.153-55). Homicide is also an area that could bring *miasma* on the *polis*, but this does not appear to have been the primary motivation behind the extensive legislation on it (Parker, R. 2005a, p.68; Kapparis, K. 2019, pp.31-32, 43-44, 252-72)

<sup>694</sup> Hook, B. S. (2005, p.18) Cf. Oedipus in Soph. *OT*, Phaedra in Eur. *Hipp.*, Arist. *Pol.*1262a32ff.

<sup>695</sup> Philo, *De Specialibus Legibus* III.22, Dem.57.20-21

<sup>696</sup> Most notably Alcibiades (Lysias 14.41-42, Athenaeus 534f-535a) and Cimon (Andok. 4.33, Athenaeus 589e-f)

<sup>697</sup> Parker, R. (2005a, pp.65-67), Filonik, J. (2013, pp.13-14)

<sup>698</sup> Collins, D. (2008, p.133), Parker, R. (2005b, pp.116-35), Ogden, D. (2002, pp.275-76)

as a result of drugs administered by a slave at the behest of the prosecutor's stepmother and revolves around whether harm was intended or if this was merely an attempt to give the men a love potion. The fact that the two men died and the focus on the intent rather than the means suggests that this was being prosecuted under Drakon's homicide law and that it was not really the use of *pharmaka* that was the primary issue as it was the intention to do harm which appears to have determined the available options.<sup>699</sup>

Alternatively, the manipulation of the natural order for nefarious reasons does not appear to have been a crime in itself, but could also have been an aggravating circumstance in a different charge or be seen as an offence against the gods and thus prosecuted as an act of *asebeia*. The enigmatic case of Theoris, the witch of Lemnos who was prosecuted, according to Demosthenes,<sup>700</sup> for selling spells (*epoidai*) and drugs (*pharmaka*) has led to some considerable debate concerning the charge she was prosecuted under,<sup>701</sup> whether it was *asebeia* on the grounds that these drugs and spells constituted unorthodox religious practices,<sup>702</sup> or was attracted to another charge of corrupting others.<sup>703</sup> It therefore seems that prosecution of cases involving magical practices, while a legitimate concern in the courts, had to conform to the pre-requisites for other legislation and thus that the abuse of magic was framed in terms of its capacity to cause harm to a victim or to offend the gods rather than as a matter to be regulated in itself.

---

<sup>699</sup> Antiphon 1.14-20, Collins, D. (2008, pp.135-36), the use of a 'botched love potion' as a defence is also attested in a case mentioned in *Magna Moralia* 16 = 1188b29-38 and continued to be admissible in courts into the 2<sup>nd</sup> century CE (Faraone, C. A. 1999, pp.110-19)  
<sup>700</sup> 25.79-80

<sup>701</sup> Collins, D. (2001, p.478 n.7; 2008, p.136), Parker, R. (2005a, pp.67-68; 2005b, pp.132-34), Dickie, M. (2001, pp.50-54)

<sup>702</sup> This is asserted by Philochorus in the 3<sup>rd</sup> century *FGrH* 382 F 60 Collins (2008, p.137) argues that this seems inconsistent with the evidence of Dem.25.79-80, unless we assume that magical expertise was seen as professing to have power over the divine as *asebeia* 'was usually centred on introducing unorthodox views about the gods that were formally recognised by the state or of innovating in divine matters.' Cf. Collins, D. (2001, p.491), Plato *Resp.*2.364b-c

<sup>703</sup> This is attested in Plu. *Dem.*14.4, but Collins (2001, pp.491-92; 2008, pp.137-39) has argued that this may have been confused with the similar story of the priestess Nino (cf. Dem.19.281, 39.2, 40.9), whose selling of *pharmaka* and *philtr*a to young men may have aggravated the charges levelled against her but were not the central accusation.

## *Law and Other Norms*

As these gaps in the law, their language rooted in ordinary normative discourse and the notion of *agraphoi nomoi* imply, written rules existed in conjunction with oral norms<sup>704</sup> which continued to be valuable sources of the *poleis*' concept of law. Estimates of literacy in Archaic communities vary considerably and probably differed significantly between *poleis*, but, while a number of archaeological finds of alphabetic writing in a range of social contexts points to a relatively widespread 'functional literacy', all agree that far fewer individuals could read than could not, suggesting that most people were accessing the law through the spoken word rather than by reading it directly.<sup>705</sup> Kristensen has argued that the users of texts like the successive compilations of law at Gortyn had relatively high levels of 'legal literacy' and that their use of written legislation as a reference point for rules whose details and language were well-known was not impeded by the inconsistent use of visual reading aids in inscriptions and their variable levels of procedural detail.<sup>706</sup> This argument is also supported by the existence of gaps in the law like the procedures alluded to but not set down in law for making contracts, getting married or divorced, or the earlier processes implied by the non-retroactivity clause in the Gortyn 'Law code's' laws on adoption<sup>707</sup> which suggest that written laws came to be situated as memory aids, modifiers or clarifiers in networks of rules that were mostly well-understood. Likewise, the importance attached to officials like the Athenian *thesmothetai* and *exēgētai*, or the *mnēmones* found elsewhere who seem to have had a role in preserving the *polis*' rules and helping litigants navigate and understand the law, suggest that the skill of comprehending such texts was highly prized and lay partly in the capacity to memorialise the law in both its oral and written forms.

As we have seen in the previous chapter, justice and religion remained closely intertwined in the texts of both our earliest poetic sources and the inscriptional evidence of law and it is likely that religious beliefs in divinely ordained 'justice' provided an important source of authority and sanction for the Greeks' concept of law. Written legal texts continued to protect themselves with references to the gods in their prescripts and curses in their

---

<sup>704</sup> Thomas, R. (1992, pp.76, 89-91, 147)

<sup>705</sup> Thomas, R. (1992, pp.88-93), Wilson, J-P. (2009, p.556-61), Sickinger, J. (2004, p.94), Kristensen, K. R. (2008, pp.1-9)

<sup>706</sup> Kristensen, K. R. (2008, pp.1-9), see also Papakonstantinou, Z. (2002, pp.135-50)

<sup>707</sup> See pp.168-72, 220-22

postscripts,<sup>708</sup> and used a normative diction akin to earlier *gnōmai* and oaths to draw authority and protection from the divine. Likewise, Antigone’s description of *Dikē* as ‘neighbour (ξύνουκος) of the gods’ speaks of a similar understanding to Hesiod’s daughter of Zeus and Themis<sup>709</sup> suggesting that the conceptual basis of this relationship remained part of the traditions of the Classical period.<sup>710</sup>

The relationship between religious culture, normative speech and written law is especially evident in the use of oaths and curses, whose ritualised diction demonstrates the same linguistic principles of setting expectations that was such an essential part of Greek legal writing and which continued to have a number of uses in the judicial sphere: to ratify legislation,<sup>711</sup> as a mode of proof,<sup>712</sup> of arbitration<sup>713</sup> and a safeguard against corrupt practices<sup>714</sup> or the overturning of laws.<sup>715</sup> Athenian jurors and archons swore oaths that they would do their jobs fairly and within the constraints of the law:<sup>716</sup> an explicit use of divine protection for written law which shows the important place that oaths continued to have in safeguarding the Athenians’ sense of justice. Similarly, Gortynian judges were required to use oaths as a means of validating their decisions, using the oath to ‘prove’ their ‘straightness’ in exercising the discretion that the law allowed them in the event that they

---

<sup>708</sup> The ‘Teos curses’ (*ML* 30, *Nomima* I.104) contain a curse against destroying the stone itself and against those failing to read it out properly, Thomas, R. (1992, p.81) cf. also Appendix 3 §3 ll.11-12. The gods also represented a higher power that officials were required by written law to appeal to, especially in the Gortyn ‘Great Code’, where judges were expected to decide cases *omnunta* (having sworn) when the law was not able to provide a precise penalty.

<sup>709</sup> *Th.*902, *Op.*256

<sup>710</sup> Dover, K. J. (1974, pp.141-44), Harris, E. M. (2006b, pp.168-70) has catalogued 19 instances in Attic oratory where the laws are seen as defining justice.

<sup>711</sup> For example the Dreros law (Appendix 3 §1) was sworn in by the *kosmos*, *ikati* and the *damioi* (Gagarin, M. & Perlman, P. J. (2016, pp.57-58)

<sup>712</sup> Cf. Antiphon 6.15-16, Lys. 10.11, Dem.23.67-70, Aeschin.2.87 (references to counter-oaths by defendant and prosecutors as part of the pre-trial *diomosia*), Is. 9.18 (an Athenian called to witness could only refuse to testify *exomosia* by swearing an oath denying that they were present at the scene of the crime)

<sup>713</sup> e.g. *GP* G81

<sup>714</sup> E.g. *IC* IV 51 (*GP* 51, *Nomima* I.64, Perlman, P. J. 2000, p.74 ; Gagarin, M. & Perlman, P. J. 2016, pp.321-23)

<sup>715</sup> See Appendix 3 §3 ll.11-12 Papakonstantinou, Z. (2008, p.113)

<sup>716</sup> Harris, E. M. (2006b, pp.159-60) Carey, C. (1994, pp.179-80) cf. Aeschin. 3.6, Antiphon 5.7, Dem.20.118, 23.96, 57.63. According to the *Ath. Pol.* (7.1, 55.5) Archons were also required to swear a similar oath, pledging a golden statue if they broke it.

could not defer to ‘what was written’.<sup>717</sup> Both *poleis* therefore demonstrate the use of oaths alongside written law to safeguard against inconsistency with legal text providing the primary yardstick, while oaths appealed to the gods to ensure consistency from judges and jurors exercising the discretionary power the law permitted.

The value of oaths in demonstrating that justice was being done can also be seen in the way that Athenian litigants used both oaths and laws<sup>718</sup> as a form of proof either as a rhetorical device or a means of testing each party’s guilt.<sup>719</sup> Antiphon in his defence speech *On the Murder of Herodes* demonstrates the complementary relationship between oaths and the law, with his accusations that his opponents have manipulated the law and neither the prosecutor nor the witnesses is appearing in court under oath. In contrast to the jury, whom the defendant claims he would trust even if they were not on oath,<sup>720</sup> he rails at how this twofold injustice undermines their case:

ἂ σὺ παρελθὼν, αὐτὸς σεαυτῷ νόμους ἐξευρών, ἀνώμοτος μὲν αὐτὸς ἐμοῦ κατηγορεῖς, ἀνώμοτοι δὲ οἱ μάρτυρες καταμαρτυροῦσι, δέον αὐτοὺς τὸν αὐτὸν ὄρκον σοὶ διομοσαμένους καὶ ἀπτομένους τῶν σφαγίων καταμαρτυρεῖν ἐμοῦ. ἔπειτα κελεύεις τοὺς δικαστὰς ἀνωμότοις πιστεύσαντας τοῖς μαρτυροῦσι φόνου δίκην καταγνῶναι, οὓς σὺ αὐτὸς ἀπίστους κατέστησας παρελθὼν τοὺς κειμένους νόμους, καὶ ἡγῆῃ χρῆναι αὐτοῖς σὴν παρανομίαν κρείσσω γενέσθαι αὐτῶν τῶν νόμων.

*These things you have evaded: having invented laws for your own ends, you prosecute me without taking an oath yourself and the witnesses give evidence against me also not under oath. It was in fact necessary that they should have sworn the same preliminary oath as yourself, touching the sacrifice, that they would testify against me. Then you bid the jury believe witnesses who are not under oath and pass sentence*

---

<sup>717</sup> Sealey, R. (1994, p.122), *see p.179, 215-16 col. XI.26-31* ‘let him decide as is written, and in other matters, let him judge under oath or according to the pleas.’ On the distinction between these two means of adjudication and the distinct procedures implied by the verbs *dikazein* where laws could be used to navigate the case and *krinein* is used where an oath is required, *see Robb, K. (1991, pp.643-46)*

<sup>718</sup> Carey, C. (1994, p.179)

<sup>719</sup> Aristotle in *Rhet.* 1.15.27-32 advocates this as another of the ‘artless proofs’ Papakonstantinou, Z. (2008, p.91), Gagarin, M. (2007, pp.39-47), Roebuck, D. (2001, pp.59-60), Thür, G. (1996, pp.59-62), Ostwald, M. (1986, p.124) cf. Antiphon 5.12, 5.15 where the use of oaths in procedures is seen as an expectation of justice and the avoidance of procedures involving them could be construed as a lack of integrity.

<sup>720</sup> Antiphon 5.8



*for murder—when your own evasion of the laws of the land has destroyed the trustworthiness of those witnesses. Yes, you imagine that, in the eyes of the court, the laws themselves should have less authority than your own actions in defiance of them.*<sup>721</sup>

The speaker proceeds to underline the deterrent value that taking an oath would present, arguing that the failure of anybody on the prosecution's side to swear an oath was evidence of the illegality of their case:

ἂ δὲ σὺ παρανομεῖς, αὐτὰ ταῦτά μοι μέγιστα μαρτύρια ἐστίν· εὖ γὰρ ἤδεις ὅτι οὐδεὶς ἂν ἦν σοι ὃς ἐκεῖνον τὸν ὄρκον διομοσάμενος ἐμοῦ κατεμαρτύρησεν.

*In fact, your infringement of the law is itself decisive evidence in my favour, because you well knew that you would find no one to testify to my guilt once he had taken that preliminary oath.*<sup>722</sup>

This argument suggests that oaths could be presented as a safeguard against corrupt practices and that, while correct application of the law could be achieved without swearing, they added an extra layer of credibility to proceedings and a refusal to swear could be a sign that a case was unjust. The inclusion of such safeguards into judicial procedures and written monuments – just like the writing down of laws themselves – reflects the close relationship between the state, religion and the law as sources of normative authority and the place of the gods as a key source of sanction behind the law.

Among philosophers, orators and ordinary citizens, traditional wisdom found in poetic discourse also continues to have had a normative role long after writing became a part of the normative systems of the *poleis*, with the works of Homer, Hesiod and Solon continuing to be seen as part of the education of citizens alongside written law. In Plato's *Protagoras*, we see laws valued as a source of moral instruction and understanding, respected for their authors' ancient wisdom in a manner akin to the educational contributions of the works of Homer and

---

<sup>721</sup> 5.12

<sup>722</sup> 5.15

Hesiod.<sup>723</sup> Likewise, Lycurgus in *against Leocrates*, shows a recognition of the value of poetry in instilling moral fortitude as he praises both the wisdom of Homer and the forefathers of the Athenians for decreeing that only the Homeric epics should be recited at the Panathenaea:

εικότως: οἱ μὲν γὰρ νόμοι διὰ τὴν συντομίαν οὐ διδάσκουσιν ἀλλ' ἐπιτάττουσιν ἃ δεῖ ποιεῖν, οἱ δὲ ποιηταὶ μιμούμενοι τὸν ἀνθρώπινον βίον, τὰ κάλλιστα τῶν ἔργων ἐκλεξάμενοι, μετὰ λόγου καὶ ἀποδείξεως τοὺς ἀνθρώπους συμπείθουσιν.

*They were right to do so. Laws do not teach on account of their brevity, but set out what it is necessary to do. But poets, recalling human life, having selected the finest deeds, through argument and demonstration persuade people.*<sup>724</sup>

This acknowledgement of the place of laws in providing prescriptive norms recognises their limitations and situates them in a wider normative framework that includes poetry as a source of *exempla* on how to behave.

The recognition of ancient poetry as a valuable source of normative culture can also be seen in the way that logographers and philosophers occasionally incorporated verses into their arguments as evidence of their wisdom and the alignment of their morality with the laws of the *polis*. After extolling the virtues of the Athenians' forebears, Lycurgus illustrates the role Homer played in instilling moral fibre by quoting from the *Iliad* and connecting its rousing message with Athens' role in defeating the Persian invasions.

Ἐκτωρ γὰρ τοῖς Τρωσὶ παρακελευόμενος ὑπὲρ τῆς πατρίδος τάδ' εἶρηκεν:

---

<sup>723</sup> cf. Plato *Prot.*325e-326a cf. also his reference to Pericles in 319-2. A similar sentiment can be found in Aeschin. 3.135. Cf. Halliwell, S. (2000, pp.94-99), Goldman, H. (2009, pp.448-58), Fowler, R. L. (2011, pp.49-66). The importance attached to the antiquity of both the laws and the wisdom of poets can also be seen in the way that both orators and philosophers gloss archaic vocabulary to facilitate comprehension or manipulate these sources of *nomos* for their purposes (Ford, A. 1999, pp.236-40). For instance Lysias' analysis and *glossai* of Solonian terminology in 10.16-18 (*see pp.192-94*) have much in common with the ways in which Homeric language was dissected and understood in philosophical texts which were similarly aiming to interpret its poetic wisdom to fit their arguments. Cf. Plato *Gorg.*485d, Xen. *Mem.*1.2.58-59

<sup>724</sup> Lyc. *Leoc.*102

ἀλλὰ μάχεσθ' ἐπὶ νηυσὶ διαμπερές. ὃς δέ κεν ὑμέων  
βλήμενος ἢ τυπεὶς θάνατον καὶ πότμον ἐπίσπη,  
τεθνάτω. οὐ οἱ ἀεικὲς ἀμυνομένῳ περὶ πάτρης  
τεθνάμεν: ἀλλ' ἄλοχός τε σὴ καὶ νήπια τέκνα,  
καὶ κλῆρος καὶ οἶκος ἀκήρατος, εἴ κεν Ἀχαιοὶ  
οἴχονται σὺν νηυσὶ φίλην ἐς πατρίδα γαῖαν.

τούτων τῶν ἐπῶν ἀκούοντες, ὧ ἄνδρες, οἱ πρόγονοι ὑμῶν καὶ τὰ τοιαῦτα τῶν ἔργων  
ζηλοῦντες οὕτως ἔσχον πρὸς ἀρετὴν ὥστ' οὐ μόνον ὑπὲρ τῆς αὐτῶν πατρίδος, ἀλλὰ  
καὶ πάσης τῆς Ἑλλάδος ὡς κοινῆς ἤθελον ἀποθνήσκειν.

*Thus Hector, encouraging the Trojans [to fight] for their homeland spoke thus:*

*“But fight, relentlessly by the ships! Whoever of you,  
Shot or struck, should be drawn unto death and fate,  
Let him die! It shall not be unseemly to die defending your fatherland  
But your wife and young children and your  
Land and your home shall be unharmed, if ever the Achaeans  
Leave with their ships to their dear ancestral land.*

*Hearing such words, gentlemen, and emulating such deeds, did your ancestors have  
such courage that they were willing to die not only for their own fatherland, but also  
for the whole of Greece collectively.<sup>725</sup>*

This type of argument and the normative role it ascribes to the works of earlier poets is recognised in Aristotle's *Rhetoric* when he sets them as ‘ancient witnesses’ (*martyres palαιοi*) alongside oaths and laws as ‘artless proofs’, suggesting that written legislation was only one source of normative authority that could be used to support a speaker's case or, as in the case of Antigone, be shown to go against the prevailing sense of what was right.<sup>726</sup> While

---

<sup>725</sup> Lyc. *Leoc.*103 cf. *Il.*15.494-99

<sup>726</sup> *Rhet.*1.15. 13-14 – the full list is laws, witnesses (which he later divides into to the work of both ancient writers, more recent celebrated speakers in court, and those who share the risks of the courtroom), contracts, torture and oaths. Wohl, V. (2010, p.27). As we shall see,

such arguments are relatively rare in our extant speeches and none seems to illustrate Aristotle's suggestion of using ancient witnesses to show that a law is inherently wrong, his inclusion of oral modes of normative discourse alongside written law suggests that throughout the Archaic and Classical periods laws were being seen in the context of traditional morality rather than separate from it and was being assimilated into an ancient and thriving normative culture.<sup>727</sup>

## II. *Polis*, Authority and Procedure

Despite these areas of continuity, written laws continued to proliferate across the Greek world and became important pillars of the normative frameworks of *poleis* with their detailed, standardised and repeatable rules. These properties fundamentally changed the ways that rules were used and conceived, permeating normative culture and creating new approaches to their application. Aeschines 3.199-200 describes law as defining *dikē*, not only stating the connection between the laws of the city and the divine ideal of justice, but also characterising the relationship between the two.

οὐ γὰρ ἀόριστόν ἐστι τὸ δίκαιον, ἀλλ' ὀρισμένον τοῖς νόμοις τοῖς ὑμετέροις. ὥσπερ γὰρ ἐν τῇ τεκτονικῇ, ὅταν εἰδέναι βουλόμεθα τὸ ὀρθὸν καὶ τὸ μὴ, τὸν κανόνα προσφέρομεν, ᾧ διαγιγνώσκεται, οὕτω καὶ ἐν ταῖς γραφαῖς ταῖς τῶν παρανόμων παράκειται κανὼν τοῦ δικαίου τουτὶ τὸ σανίδιον, τὸ ψήφισμα καὶ οἱ παραγεγραμμένοι νόμοι.

*For justice (to dikaiōn) is not unbounded (aoriston), but is bounded (hōrismenon) by your laws (nomoi). For as in carpentry, whenever we wish to know what is straight and what is not, we bring out the measuring stick (canon), with which it is determined*

---

this style of argumentation – using excerpts from Homer, Hesiod and Solon as evidence for their moral standpoint – is not dissimilar to the ways that Athenian orators and philosophers analysed their laws as a form of normative evidence both in letter and in spirit Ford, A. (1999, p.231)

<sup>727</sup> Carey, C. (1994, pp.173-75), Dover, K. J. (1974, pp.292-95), Halliwell, S. (2000, pp.94-99), Goldman, H. (2009, pp.448-58), Fowler, R. L. (2011, pp.49-66), Todd, S. C. (1990, p.32), cf. Ostwald, M. (1986, pp.94-108) who shows that *nomos*, *nomimos* and *nomizein* are frequently associated with oaths, curses and imprecations (pp.94-95) as well as other customary and religious behaviours suggesting that 'law' was a part of this wider normative framework.

(diagignōsketai), so in indictments for illegal motions there lies as a measure of justice this tablet, the vote and the laws written beside it.

Aeschines presents written law as offering precise rules to follow that circumscribed and collectively embodied the ideal of justice (*to dikaion*). The fixity and physical presence of inscribed law allowed the rules displayed throughout the *polis* itself to be a locus of normative power, augmenting and directing the community's sense of justice, providing boundaries that decisions had to be taken in light of, and directing judges and juries to follow written procedures.

This can be seen in the surviving legal inscriptions themselves with their use of a diction that could combine substantive and procedural rules of varying levels of complexity and which meant that laws could accrete on inscriptions that would have punctuated the landscapes of cities. While the language and syntactical structure that enabled the composition of multi-stage procedures and differentiated tariffs was already a component of oral agreements, oaths and collections of *gnōmai*, writing them down gave *poleis* the tools to inscribe precise penalties for general cases, with multiple specific stages that could be repeated consistently each time a situation arose. Such texts gave the *polis* a singular normative voice embodied in inscriptions which would stand long after their enactment, sometimes growing in complexity over time as they were edited, compiled or situated in expanding networks of written rules.

This would change the relationship between the city, its rules and its institutions with the *polis* itself becoming a significant actor in the creation, administration and propagation of law. The references to the officials and civic bodies involved in enactment procedures gave rules a clear, human source with a distinct moment of creation, including references to officials that could be both dateable and accountable.<sup>728</sup> Unlike the timeless *themistes*, customs and maxims of Homeric discourse, written legislation served as a physical *terminus post quem* in the *polis*' normative culture, speaking of the rules set down at a specific time.<sup>729</sup> The singular voice of such rules and their physical presence rooted the *polis*' laws in the city itself meaning that as procedures accreted they formed rules of increasing complexity and networks of procedures came to define *nomos* in practice and helped to crystallise each community's distinctive normative identity.

---

<sup>728</sup> See pp. 143-49 Ostwald, M. (1986, pp.88-93), Thomas, R. (1992, pp.144-46), Hölkeskamp, K.-J. (1992, p.58), Kapparis, K. (2019, pp.36-40)

<sup>729</sup> Ostwald, M. (1986, pp.87-94)

### *Officials and the Law*

The complexity of the law and its appearance as a permanent visual symbol of the *polis*' authority changed the relationship between officials and the rules they were applying, forcing them to operate within the confines of written legislation and threatening them with real, enforceable consequences if they did not. Some of the earliest Greek normative inscriptions we have concern the regulation of officials and this may even have been a primary motivation for the writing of law in the first place.<sup>730</sup> This interest in limiting authority may have had its roots before the arrival of written law,<sup>731</sup> but was also fundamentally changed by it as the *polis*' inscribed voice gave it the power to direct and fix both officials' roles and the penalties for failing to adhere to the rules of their positions. The 7<sup>th</sup> century text from the Cretan city of Dreros which imposes limits on the repeated tenure of the office of *Kosmos* shows that this was a major concern for the earliest legislators.<sup>732</sup> The text's references to the *damos* imply that it was voicing the will of a populace that was involved in validating the legislation, while the precise details of the fines for violations must have had considerable deterrent value as well as providing a clear means of calculating the penalties for an infringement.<sup>733</sup> This text may have simply been recording existing practices like limited term offices and fines expressed as multipliers,<sup>734</sup> but the early date of this inscription suggests that this was one of the first issues that written laws were beginning to

---

<sup>730</sup> Papakonstantinou, Z. (2008, pp.55, 121), Raaflaub, K. A. (2000, p.44), Osborne, R. (1996, p. 188), Humphreys, S. C. (1988, p.469) Arist. *Pol.* 1273b27-1274b28, *Ath. Pol.*41.2. This is supported by the fact that decrees detailing fines for officials breaking their terms of office or failing in their duties and appealing to the authority of the community as a whole can be found throughout the Greek world from the 7<sup>th</sup> century well into the 4<sup>th</sup> century (Cf. Appendix 3 §1 (Dreros, 7<sup>th</sup> century), *SEG* 30.380 (Tiryns, 7<sup>th</sup> century – *discussed below*), *Nomima* 1.62 (Chios, 6<sup>th</sup> century), *Nomima* 1.23 (Elis, 5<sup>th</sup> century), *Nomima* 1.85 (Erythrai, 5<sup>th</sup> century), *IG xii suppl.* 347 (Thasos 4<sup>th</sup> century)) suggesting that writing continued to be used to set clear penalties if officials broke the rules.

<sup>731</sup> Papakonstantinou, Z. (2008, pp.41-50, 108-26) cf. *Op.*38-39, 220-21, 248-64, *Th.*81-90, 434, Solon fr.4 *See pp.*88-90

<sup>732</sup> Hölkeskamp, K.-J. (1992, pp. 73-75)

<sup>733</sup> *See pp.*223-26

<sup>734</sup> *Cf. pp.*70-72

address,<sup>735</sup> through clearly-defined *polis*-sanctioned rules which constrained the powers of officials and held them to account.<sup>736</sup>

The publication of written inscriptions with detailed procedures and restrictions on official power would also have an effect on the ways that judges could operate, requiring them to follow the actions set out in the law and limiting their discretion when determining the outcomes of dispute resolutions. The prescriptiveness of the legislation at Gortyn is supported by an expectation that the law is followed which is explicitly stated in one of the addenda to the Gortyn law code. This demonstrates the use of written law to regulate directly the actions of officials within the judicial process by prescribing what a judge has to do when deciding on a verdict and confining him to doing this as directed by the law (col. XI.26-31).

τὸν δικαστάν, ὅτι μὲν κατὰ  
μαίτυρανς ἔγρατται δικάδδ-  
εν ἔ ἀπόμοτον, δικάδδεν αἰ ἔ-  
γρατται, τῶν δ' ἄλλῶν ὀμνύντ-  
α κρίνεν πορτὶ τὰ μολιόμεν-  
α

*And let the judge decide what it is  
written he shall decide whether by  
witnesses or by oath of denial, let  
him decide as is written, and in  
other matters, let him judge under  
oath or according to the pleas.*

This clarification of a judge's role limits him only to decide the disputes mentioned in the text in accordance with what is written (*ai egrattai*) therein and it also stipulates the ways in which he is to do this: relying on witness testimony or oaths to establish the facts of the case and to swear an oath before pronouncing on matters not addressed by the law.<sup>737</sup> A

---

<sup>735</sup> Cf. *SEG* 30.380: a late 7<sup>th</sup> century inscription from Tiryns regulating religious hierarchies see pp.227-28

<sup>736</sup> Gagarin, M. (1986, p.90), Papakonstantinou, Z. (2008, pp.123) cf. inscriptions detailing: fines for judges failing to swear oaths (Gortyn - *IC* IV 82), fines for negligence (Chios – *ML* 8), stripping of rights and property for failing to prosecute (Naupaktos – *Nomima* I.43, *IG* ix 1<sup>2</sup> 718, Thasos – *IG* xii (8) 265) or collect fines (Thasos – *IG* xii *suppl.* 347)

<sup>737</sup> These two methods for deciding cases are often mentioned in individual sections of legislation where a judge's verdict is required, suggesting that these were the two most acceptable types of judicial decision and that the sentiment of the text is that judges should use one or other of these depending on what is specified in the text for the case in question. For cases not specified by the text, this clause also restricts judges to using particular methods – in this case either an oath, whether that be a challenge issued to one of the litigants or his own, or the arguments brought by both parties. The text gives especially precise details on the ways oaths and witnesses can be obtained and employed in cases of adultery, col.II.27-45 and separation col.III.5-9, 18-22, 54-55. For other references to judges deciding on oath or by witness verdict cf. I.11-14, 20-24, 38-39, II.19-20, II.55-III.1, III.14-16, IV.6-8, V.42-44.

similar emphasis on the primacy of the law as was written can be seen in the oaths sworn by the nine archons and by Athenian jurors, who swore to vote in accordance with the law and, where no law existed, with their ‘most just opinion’ (*dikaioatē gnōmē*).<sup>738</sup> This suggests that, in both these *poleis*, legal inscriptions were being held up as the primary source of authority that judges had to abide by over and above their own discretionary power.<sup>739</sup> By confining judges to operate within the highly prescriptive procedures set out in legal texts, the Gortyn law code and the Athenian jurors’ and archons’ oaths apply significant constraints to the discretionary power that judges negotiating disputes might once have had recourse to or how far litigants could pursue a matter.

Despite the lack of professional advocates or jurists, written law rooted in the normative authority of the *polis* did create a need for individuals with the skills to create and administer written legislation. Inscriptions and the scribes who created them had to be paid for,<sup>740</sup> and the *polis*’ emergence as a legislative entity was partly aided by its ability to directly employ such individuals rather than relying on kings or wealthy patrons. References to legal specialists in forensic speeches and inscriptions proclaiming the terms by which scribes were employed suggest that, while several official positions appear to have pre-dated written law, some were changed significantly by the introduction of legal writing and others were products of it. The pseudo-Aristotelian, *Athenaiōn Politeia* (3.4) describes the way that in the 7<sup>th</sup> century before the time of Drakon, the *thesmothetai* were appointed to guard Athens’ *thesmia* during judgements (*krisin*) by writing them down (*anagrapsantes*), suggesting an intersection between the existing oral rules of courts before written legislation and the recording of them in writing to facilitate practical use during trials. While we cannot know that this is really how the transition to writing occurred, this does suggest the early

---

<sup>738</sup> Harris, E. M. (2004, p.24; 2006b, pp. 159-62), Sickinger, J. P. (2007, p.105), Mirhady, D. C. (2007, pp.52-55), Robb, K. (1991, p.646-54) Wohl, V. (2010 p.31) *Ath. Pol.* 7.1, 55.5, *Xen. Mem.* 1.1.18, *Lys.* 16.12

<sup>739</sup> Gagarin, M. (2000, pp.571-74) suggests that the usages of the verbs *dikazein* and *diagronai* in Drakon’s homicide law similarly defines the roles and level of discretion permitted to the *basileis* and *ephetai* in Athenian homicide trials. Mirhady, D. C. (2007, pp.54-55) identifies similar vocabulary to draw such distinctions in the oath of the Amphictyonic league (*IG ii2 1126.3-4*) and one from an inscription from Ephesus (*IG xii2 526*).

<sup>740</sup> Osborne, R. (1999, pp.349-50)



incorporation of written rules into archaic Greek trial proceedings, perhaps as a means to ensure consistency within the courts in their use of the *polis*' traditional *thesmia*.<sup>741</sup>

Two decrees explaining the terms under which scribes were working also show the incentives cities were willing to provide to individuals with the skills of writing to publish their legislation and keep records of their judicial processes. The first of these describes the engagement of Spensithios by the *polis* of Datala<sup>742</sup> using the enactment formula *ewade Datalausi* to show that the community as a whole had authorised this appointment, and provides him freedom from taxation, rations supplied by each of the tribes and a salary in exchange for his services, suggesting that the *polis* had the power to offer these things and that they were seen as valuable incentives to recruit such skilled craftsmen. The inscription goes on to declare that he and his descendants shall write (*poinikazen*) and record (*mnamoneuwen*) the proceedings of events, both sacred and secular for the rest of time. These roles suggest a similarity to that ascribed to the early Athenian *thesmothetai* in the production of legal writing,<sup>743</sup> or which is implicit in the title of the *mnēmones*, and also implies that by Spensithios' time in Datala, writing had become a recognised means of recording trial proceedings and official decrees, and may well have permeated into the roles of similar officials elsewhere. Another early 5<sup>th</sup> century text from Elis<sup>744</sup> also describes protections for a scribe (*gropheus*) called Patrias, again evoking the power of the *polis* with its enactment clause (*a wratra tois waleois*), prescribing a system for fining any *basileus* who mistreats him or fails in his duties by him.<sup>745</sup> These texts suggest that the specialist skill of writing and its capacity to project the normative power of the *polis* was creating a need to appoint individuals to create and administer legal texts, and also hints at the significant power they held in creating the *polis*' rules and procedures through the detailed protections and rights they were able to secure by their appointments.

Some specialists also seem to have had a role in the navigation of the law, especially in Athens, where there were those one could consult to find out where a given rule might be, and it is even possible that copies were kept by officials who could have assisted would-be litigants with their content and location, and to choose from the array of laws and processes

---

<sup>741</sup> Cf. Arist. *Pol.* 1321b35 Lanni, A. (2004, p.165), Sealey, R. (1994, p.29), Gagarin, M. (1981, p.71, 1986, pp.51-56, 131, 2008, pp.114-15), Sickinger, J. P. (1999, pp.10-14)

<sup>742</sup> Appendix 3 §8, *GP Da1* Gagarin, M.; Perlman, P. J. (2016, pp.181-96), Papakonstantinou, Z. (2002, pp. 144-45; 2008, pp.56-57), Colvin, S. (2007, pp.52-53)

<sup>743</sup> *Ath. Pol.* 3.4

<sup>744</sup> *Nomima* I.23

<sup>745</sup> Papakonstantinou, Z. (2008, p.122)

available to them.<sup>746</sup> While specialists like the *mnēmones* may have pre-dated written law,<sup>747</sup> it seems likely that, alongside the need for new skills to make use of the technology of writing, the creation and administration of legal text fundamentally changed the relationships between such officials and the rules they were working with. Instead of advising solely on matters of understood custom or how one might expect actions to pan out, their role appears to have come to include informing citizens of the law's content and location, whether by reading them aloud at public occasions<sup>748</sup> or by advising citizens on how to proceed with legal cases.

A rare glimpse of this is offered in Demosthenes 47.68-71, where the speaker asks the advice of the *exēgētai*, who deliver both their interpretation and advice on how to proceed, which he then validates by checking the stele on which the law is written.<sup>749</sup> The *exēgētai* distinguish between 'interpret' (ἐξηγήσονται) the law and 'advise' (συμβουλεύσων) on how to proceed, suggesting that these are separate strands of their role in Athenian legal practice. While some of their advice is similar to the types of advisory statements about how people might react that we find in Homer and Hesiod, they also advise him in line with the types of procedural restrictions found in the law itself, which prevent him from bringing his suit before the *archon basileus* because he is neither related to, nor the master of the victim. This passage suggests that the procedural rules found in written legislation had become part of the normative schema by which such officials could advise citizens of the content of rules and also shows the role written law had in limiting the procedures that could be brought by a given individual.

### *Procedures*

The majority of the rules we have from Greek legal inscriptions are procedural in nature, using casuistic language to set out hypothetical scenarios and prescribe the legal actions that should arise from them. Substantive rules tend to occupy less space on inscriptions and are often implicit in rules that explain breaches, suggesting that an important application of written law was to cement complex processes and methods for establishing

---

<sup>746</sup> Sickinger, J. P. (2004, pp.101-2; 1999, pp.73-83)

<sup>747</sup> See pp.187-89

<sup>748</sup> Perhaps in a manner akin to the way that the Teos curses (Appendix 3 §9) demand that *timocheontes* read out the text three times a year and threaten them with the same curse that is issued for all the other wrongdoers in the text if they fail to do so. Thomas, R. (2005, pp.55-56; 1992, p.84), Cf. Also *IC III iii*4.40-47 Papakonstantinou, (2008, p.79)

<sup>749</sup> Thomas, R. (1989, pp.66-67)

verdicts and calculating *poinei*.<sup>750</sup> This emphasis on procedure in written texts enabled consistent, complex legal mechanisms for specific situations to be recorded, which in turn became embedded in each city's normative culture, reducing the discretionary power of officials and channelling the behaviour of litigants.<sup>751</sup>

The sequence of escalating penalties for unlawful seizure in the Gortyn law code is especially prescriptive in its allocation of tariffs, not only setting precise penalties for each stage the dispute reaches, but even imposing a maximum fine for persistent offenders (*IC IV 72.1.35-39*) which limits the power of judges not by regulating them directly, but by using the text of the law to restrict the options available within the procedure itself:

ε̃ δέ κα καταδι-  
 κάκσει ὁ δικαστάς, ἐνιαυτοῖ π-  
 ράδδεθθαι τὰ τρίτρα ε̃ μείον,  
 πλίον δέ μέ· τῷ δὲ κρόνο· τὸν δι-  
 καστὰν ὀμνύοντα κρίνεν.

*And if, from the time the judge  
 gave the verdict, a year [has  
 elapsed], triple penalties or less  
 are to be enacted, but no more. As  
 to the time, let the judge decide  
 under oath.*

The legislation allows judges to determine the stage the dispute has got to and thus the severity of the fine, but manages the procedure closely, indicating where to make use of oaths and where judges had the discretionary power to decide on either the facts of the case or what penalty to award within the limits of the law.

By fixing procedures in this way, legal inscriptions set clear criteria by which particular provisions could be invoked or tariffs could be imposed. At Eltynia,<sup>752</sup> we see a selection of penalties for wounding that could be handed down, not only on the basis of the severity of the injuries caused, but the text also contains clauses for penalising those who initiate a violent altercation (1.2), absolving those who act in self defence (1.4), for those who harm victims from different age-sets (11.5-7) and in specific cities in the *polis* (1.6). While the

<sup>750</sup> Hall, M. D. (1996, pp.74-75)

<sup>751</sup> Gagarin, M. (1986, pp. 109-11, 118), Philips, D. (2013, p.vii)

<sup>752</sup> Appendix 3 §7 *GP Elt2 See pp.155-57*

distinctions that determined these were probably nothing new,<sup>753</sup> fixing these requirements and attaching set penalties to them creates normative channels that indictments would have had to follow, with set criteria that would have to be met.

The clear and publicly available options presented by legal procedures and the emergence of overlapping rules as laws began to accrete preserved, propagated and ingrained procedures from which litigants would have had to select the articles of legislation they were to use and defined the criteria which their case had to meet. The different procedures for assault or battery that emerged in Athens had different penalties but also incurred varying burdens of proof and levels of risk on the prosecutor.<sup>754</sup> *Dikē aikeias* allowed a victim to prosecute an offender for an unprovoked assault, with a fine set by the jury selecting from sums proposed by the litigants. *Trauma ek pronoias* (intentional wounding) was prosecuted by a *graphē* and so could be taken up by a third party (*ho boulomenos*)<sup>755</sup> but required proof that the assault was pre-meditated which could be demonstrated by proving that the offender was armed,<sup>756</sup> and resulted in exile and confiscation of all property.<sup>757</sup> *Graphē hybreōs* could be punishable by death and, while hard to define, seems to have required that there be some desire to cause humiliation to the victim.<sup>758</sup>

The choices made by prosecutors could be self-consciously evoked by orators wishing to justify their cases or discredit their opponents, citing both the spirit and the letter of the law to show that the indictment brought meets the criteria set out in it, or that it has been brought wrongfully.<sup>759</sup> This shows a new way of transforming disputes by shifting the points of contention to whether the facts of the case fitted with the criteria set out in the law, and arguing on the basis of legal logic. Writing therefore seems to have changed the ways in which Athenian litigants approached cases, having to select procedures and penalties from the ones available and then having to justify their selections or discredit those of their

---

<sup>753</sup> See pp.68-69, 76 the issue of whether a crime was ‘intentional’ (*ethelōn*) in Homeric descriptions of both homicide and sexual misconduct

<sup>754</sup> Kapparis, K. (2019, p.42), Phillips, D. (2013, pp.33, 85-87), Lanni, A. (2006, pp.35-36), Carey, C. (2004, pp.111-32), Ober, J. (2000, pp.544-45), Todd, S. C. (1993, pp.160-63; 1990, pp.27-29), Fisher, N. (1990, pp.133-38)

<sup>755</sup> MacDowell, D. M. (1978, pp.53-54), Humphreys, S. C. (1988, pp.469-70), Lanni, A. (2006, p.16), Phillips, D. (2013, pp.91-92), Leao, D. F. & Rhodes, P. J. (2015, pp.69-70) cf. *Ath. Pol.* 9.1, *Plu. Sol.* 18.6-7

<sup>756</sup> *Lys.*3.28, 41-43, 4.5-9, *Dem.*54.18

<sup>757</sup> *Lys.*3.38, 4.13

<sup>758</sup> Phillips, D. (2013, pp.85-87), Carey, C. (2004, pp.118-19), Fisher, N. (1990, pp.125-32), Murray, O. (1990, pp.140-41)

<sup>759</sup> Cf. *Dem.*22.25-27, *Hyp.*4.3-6, *Isok.*20, *Lys.* 3.40-43

opponents, rather than negotiating on the basis of the more general rules we find in Homeric and Hesiodic normative discourse.<sup>760</sup>

The prescriptiveness in written laws about who could or should pursue legal action also suggests that details of this type could be enshrined in written law rather than left to societal expectations or the judgement of those presiding over cases. Written inscriptions could use casuistic language to set clear sequences of relatives who are permitted to divide inheritances or required to prosecute homicides, showing how written law could be used to impose obligations on some and restrict the involvement of others.<sup>761</sup> Traditional norms may have had systems and expectations for resolving orders of succession or the resolution of murder, but given the difficulties presented by inheritance and the capacity for cycles of violence to develop in Homer and Hesiod,<sup>762</sup> it should come as no surprise that these issues are treated at some length by the legislation of Greek *poleis*. Writing such rules down fixed procedures for establishing who had rights or responsibilities in each case, to which both officials and litigants could defer when determining who had the right to submit cases.

By prescribing the order of relatives who may accept a settlement, Drakon's homicide law establishes a clear and fixed hierarchy which bars less closely-related individuals from getting involved or negotiating with the defendant. While the text acknowledges a role for self-help, the imposition of this structure on proceedings explicitly and concretely limited who was required to pursue restitution and how far they could go. A similar structure of sequential groups of relatives can also be seen in inheritance legislation where it is used to establish the order of succession. The utility of recording such complex sequences in writing and consistently applying them is especially evident in the Athenian law on intestate succession, republished at the end of the 5<sup>th</sup> century and quoted at Demosthenes 43.51<sup>763</sup> which exhibits the same kind of logic that we see in Drakon's homicide law or the escalating penalties in Gortyn's unlawful seizure legislation:

ὅστις ἂν μὴ διαθέμενος ἀποθάνῃ, ἐὰν μὲν παῖδας καταλίπη θηλείας, σὺν ταύτησιν, ἐὰν δὲ μὴ, τούσδε κυρίου εἶναι τῶν χρημάτων. ἐὰν μὲν ἀδελφοὶ ὧσιν ὁμοπάτορες: καὶ ἐὰν παῖδες ἐξ ἀδελφῶν γνήσιοι, τὴν τοῦ πατρὸς μοῖραν λαγχάνειν: ἐὰν δὲ μὴ

---

<sup>760</sup> See Chapters 1 and 2 This need to justify the selection of the indictment could even extend to justifying the existence of the indictment itself with orators occasionally situating the prescribed offence and its penalty in a wider context of laws. Cf. Dem.22.25-27 and 54.18

<sup>761</sup> See pp.157-59

<sup>762</sup> See pp.65-66, 79-83

<sup>763</sup> Leão, D. F. & Rhodes, P. J. (2015, p.83-84), Dem.43.51 cf. Dem.44.12, Is. 7.20

ἀδελφοὶ ὧσιν ἢ ἀδελφῶν παῖδες, \* \* \* ἐξ αὐτῶν κατὰ ταῦτα λαγχάνειν: κρατεῖν δὲ τοὺς ἄρρενας καὶ τοὺς ἐκ τῶν ἀρρένων, ἐὰν ἐκ τῶν αὐτῶν ὧσι, καὶ ἐὰν γένει ἀπωτέρω. ἐὰν δὲ μὴ ὧσι πρὸς πατρὸς μέχρι ἀνεπιῶν παίδων, τοὺς πρὸς μητρὸς τοῦ ἀνδρὸς κατὰ ταῦτα κυρίου εἶναι. ἐὰν δὲ μηδετέρωθεν ἢ ἐντὸς τούτων, τὸν πρὸς πατρὸς ἐγγυτάτω κύριον εἶναι. νόθῳ δὲ μηδὲ νόθῃ μὴ εἶναι ἀγχιστεῖαν μὴθ' ἱερῶν μὴθ' ὀσίων ἀπ' Εὐκλείδου ἄρχοντος.

*Whoever dies having not produced a will, if he leaves female children, it [his property] shall be theirs, but if not, the following shall have control of his wealth, if he has brothers of the same father and if sons be born to those brothers, then they shall receive their father's share, and if there are not brothers or sons of brothers, [...] their descendants shall inherit. The male relatives and their male descendants shall have control, whether they are of the same parents or a more distant family. And if there are not relatives on the father's side as far as cousins once removed, let those on the man's mother's side inherit in the same way. And if there be none of these from either side, let the closest relative on the father's side inherit. Let not an illegitimate son or daughter be considered close kin neither in sacred nor in secular matters from the time of the archonship of Eukleides.*

This law shows that there was a clear sequence of relatives who had the right to claim an inheritance. The series of casuistic conditionals lends itself to providing this type of detail and the writing down of this process creates a lucid, repeatable system for determining which groups stand to inherit over others and thus limit the potential for other interested parties to stake a claim.

At Gortyn, the same type of rule can be seen in one of the longest sections of the code where systems were in place for inheritance and adoption.<sup>764</sup> This would have produced far greater clarity, making use of the technology of writing to address the most complex points, such as which relations should take priority or the portions they were to receive<sup>765</sup> and to set out procedures to be followed in general.<sup>766</sup> Written legislation could therefore consistently address areas of confusion such as whether an illegitimate son could inherit and could

---

<sup>764</sup> IC IV 72.4.23-5.54, Gagarin, M. (2008, pp.163-64) Davies, J. K. (1996, p.44) *See pp.175-77*

<sup>765</sup> 5.9-28 cf. 10.39-11.17

<sup>766</sup> 5.28-54, Gagarin, M. (1982, pp.134)

provide instructions on how different cases should be managed. The complex formulas found in these texts not only have the effect of reducing the possibilities of unsettled conflicts raging on without a clear end, but also resolve the problem of individuals dying intestate,<sup>767</sup> though in Athens this is purely a case of order of succession whereas in Gortyn, the quantities inherited are also addressed. Owing to the complexity of kinship relationships and their value in maintaining stability,<sup>768</sup> writing was especially useful for providing clear and fixed mechanisms for how inheritances should be divided, what to do if there is no apparent claimant, who should have a say in the prosecution of a homicide and how far they could pursue the matter.

Detailed written laws therefore seem to be aimed at providing greater clarity, reducing the likelihood of any such ambiguities by providing nuanced but repeatable sequences that acknowledged the complexities of status and kinship relations, channelling these powerful social forces and regulating institutions and hierarchies through prescriptive procedures. This served both to limit the ways in which officials might judge a case, by confining them to follow prescribed procedures and set fines, and also to define the rights and responsibilities of litigants, limiting the capacity for disputes to run unchecked. By recording such provisions in published inscriptions, the *polis* was able to manage dispute resolutions as an entity in its own right and created bodies of prescriptive rules that could become increasingly nuanced and detailed as they grew and evolved.

### *Poinai*

While the types of penalties available changed little, the complexities of setting fines with the attendant issues of crime-severity and the status of both offender and victim, are

---

<sup>767</sup> Sealey, R. (1994, pp.70-71) Some of the earliest laws from Gortyn cover a range of issues concerning inheritance and adoption, (Gagarin, M. & Perlman, P. J. (2016, pp. 281-85) *GP* G15 & G17-21) and several Athenian laws attributed to the age of Solon are quoted by Demosthenes dealing with the validity of wills, (Dem. 46.14 – Plutarch (*Sol.*21.3-4) says that wills could not be made before Solon’s reforms cf. Leão, D. F. & Rhodes, P. J. (2015, pp.78-82)) the protection of widows, orphans and *epiklēroi*, (Dem.43.75) and who has a right to inherit if no legitimate will exists (Dem. 43.51 & 54). An especially thorny issue was the situation of the heiress (*epiklēros*) for whom, in both Athens and Gortyn, the need for a *kyrios* was such that laws were made to find her one from within her own kinship group both to administer her wealth and to ensure that it stayed within the family (Sealey, R. 1994, pp.68-69, 77-78). Another challenging issue in Athens was that the formulation appears to have raised debate about where second cousins and second cousins once removed fitted in (Is. 11.1-30, Philips, D. 2013, pp.243-44).

<sup>768</sup> Lanni, A. (2016, pp.17-47), Humphreys, S. C. (1978, pp.193-208; 1986, pp.57-91)

often subjects of legal inscriptions. The singular voice which written law conferred on the *polis* meant that cities were able to set *poinai* that could be repeated with far less room for negotiation or interpretation. From their earliest appearance in the archaeological record, laws frequently contain rules which prescribe fines and compensation, specifying either how much the *poinē* should be or providing a set method of calculation according to specific criteria. Thus a key innovation of written law was in standardising the ways that penalties were set and worked out, through either decreeing the precise value of the appropriate *poinē* or providing the formula by which it could be calculated.

As we have seen, the use of relative values and multipliers to quantify compensation or to agree procedures for events that were yet to pass were nothing new and could have been used in Homeric dispute negotiations.<sup>769</sup> However, it seems likely that the ability to render such procedural details in written form helped to standardise the expected response to a particular type of offence, providing concrete, specific penalties for judges to award and litigants to debate. The Dreros inscription, which addresses official misconduct, decrees that if someone is wrongfully appointed *kosmos*:

ὁ[π]ε δικακσίε, | ἀφτὸν ὀπῆλεν | διπλεῖ

*Whatever he has decreed, let him owe double*

Here we see the use of a multiplier διπλεῖ to indicate that the value of the settlement should be relative to the amount that was wrongfully taken, and providing a formula for calculating what it should be. While there is still some scope for negotiation, especially when establishing what ‘double the value’ means and the form the restitution should take, writing this penalty down creates a sense that the procedure itself is fixed and explicitly shows the community’s capacity to set the expected value of the fine in a consistent and visually accessible form. Crimes against the person, the state or the gods would have been rather harder for judges to evaluate in economic terms and so legal texts also issue more precise fines referring to specific values,<sup>770</sup> the writing down of which made it easier to apply them consistently and reduced the discretionary power of judges or the scope of litigants to argue or negotiate them. As early as the 7<sup>th</sup> century, an inscription from Tiryns<sup>771</sup> refers to a fine expressed as a fixed measure of grain (thirty *medimnoi*) demonstrating that the earliest

---

<sup>769</sup> See pp. 71-72

<sup>770</sup> Sealey, R. (1994, pp. 41-3)

<sup>771</sup> SEG 30.380



lawmakers were using writing to fix not only the means of calculating the correct penalty but the value of a penalty itself even before the use of money.<sup>772</sup>

The increasing use of minted coinage and monetisation of the economies of Greek *poleis* from the 6<sup>th</sup> century onwards<sup>773</sup> is also reflected in legal inscriptions which were gradually incorporating penalties in terms of monetary value to replace quantities of grain, livestock or high value objects. This made it easier to fix the values of *poinai* and brought this means of regulating procedures even more under *polis* control. The transition to this system of valuing *poinai* can be seen in a number Cretan inscriptions from the 6<sup>th</sup> and early 5<sup>th</sup> centuries: at Gortyn *GP* G8 shows the use of cauldrons to express the value of a tripod offered as a *poinē*, at Datala *GP* Da1 speaks of payment in goods valued at twenty Drachmas, and at Eleutherna, *GP* Ele 13.1-2 and Ele 9 where we see mixed penalties of both grain and coinage units.<sup>774</sup> The utility of coinage to set absolute *poinai* and its place in the evolution of written legislation can be seen in the fragmentary early 5<sup>th</sup> century inscription from Eltynia analysed in the previous chapter which offers a breakdown of penalties stipulating that an offender will be fined (*apoteisei*) different numbers of *drachmai* according to the manner and severity of any wounds inflicted, the intention to do harm, whether he acts in self-defence and where the fight took place, suggesting state intervention aiming to quantify different types of physical harm.<sup>775</sup>

[...]αι δέ κα| κηρί| τροόσει| ἀποτ[ει]σεῖ| πέντε| δαρκν[άς]|·αι δὲ κή<ς> ρίνος| αἶμα ρυῆι [-]  
 [-] τοῖς Ἐλτυνιοῦσι.|αἶ κ' ἄρκσει μάκας|ἀποτεισεῖ|δέκα δαρκνὰς| ὄπε κ' ἄρκσε[-]  
 [-] ἀμερᾶν| ἄ κ' ἀνεείπη| ὕστερον δὲ μή·|κόσμον δὲ πράδεν| τὰν ἐς πόλιν| τιμάν.| ὅποτερος [-]

<sup>772</sup> This use of goods can also be seen in the 6<sup>th</sup> century, with evidence that Drakon set down a fine of twenty oxen, (Pollux 9.61, Carey, C. (2013, pp.18-19)) and several Gortynian laws which use high-value objects like cauldrons, tripods and metal spits (*obols*) as set units of value. (Gagarin, M.; Perlman, P. J. (2016, pp.265-90)) The means of paying and valuing compensation in these early laws was nothing new. As we saw in Chapter 1 (pp.66-67), similar means of establishing value of compensation can be seen in Homer with Agamemnon's inclusion of golden talents and cauldrons among his treasures to Achilles at *Il.*9.264-65 or Achilles' use of multipliers to assure Agamemnon that he will not go without compensation for the loss of his prize in *Iliad* 1.128. However, writing the procedure and displaying it made it far easier for Greek *poleis* to set tariffs for different offences and precise systems for calculating *poinai* each time a particular offence was committed.

<sup>773</sup> Van Wees, H. (2009, pp. 460-64), Wilson, J-P (2009 p.553), *Ath. Pol.* 10, *Plu. Sol.* 15.4

<sup>774</sup> Gagarin, M. & Perlman, P. J. (2016, p.110)

<sup>775</sup> Appendix 3 §7 *GP* Elt2 See pp.156-57

- But if he should wound with his hand he shall be fined five drachmas; and if blood should flow from his nose –

- to the Eltynians. If he should initiate a fight he shall be fined ten drachmas whenever he should start –

- within ?] days from when he announces it and no later; and the kosmos is to exact the fine on behalf of the city. Whichever-

The use of coinage to set penalties in this example allows the *polis* to express *poinai* in standardised, state-sanctioned units, set against the circumstances of the affray and the injuries inflicted. It also enables different instances of wounding to be more readily compared in terms of severity, sending a clear message as to the city's substantive distinctions between offences and its control not only over norms, but over the prices of settlement.

Combining multipliers with fixed monetary obligations enabled legal texts to be constructed that create complex and nuanced provisions that account for both the quantifiable issues surrounding property and offences against someone's person or their honour. The 5<sup>th</sup> century Gortyn law code shows the integration of the two systems into coherent procedures that provide a means of calculating both restitution or division of goods and compensation for the wrong that is caused:

αἱ κ' ἄνερ [κ]αὶ γυ-  
να διακρ[ί]νον[τ]αι, τὰ φὰ α-  
υτὰς ἔκεν, ἀτι ἔκονσ' εἰε π-  
αρ τον ἄνδρα, καὶ τῷ καρπῷ τ-  
αννεμυιαν αἱ κ' εἰ ἐς τῷ ον φῷ ο-  
ν αὐτὰς κρεμάτων, κῶτι  
κ' ἐνυπάνει τὰν [ἐμίνα]ν ἀτι  
κ' εἰ, καὶ πέντε στατερανς, αἱ κ' ὁ ἄ-  
νερ αἰτιος εἰ τὰς κε[ρ]εύσι-  
ος

*And if a husband and wife should be divorced, she is to have the property she came to her husband with (i.e. her dowry) and half of the produce, if there be any from her own property, and half of whatever she has woven within, plus five staters if the husband be the cause of the divorce;*<sup>776</sup>

Here, too the inscription is able to set out a repeatable procedure that quantifies a fixed penalty of five staters to punish a guilty party and uses multipliers to establish how the

---

<sup>776</sup> IC IV 72 col II 45-54

property is to be divided. This seems to fit with patterns from elsewhere in the inscription where we especially find multipliers in rules dealing with theft or damage to property as these are relatively easy to quantify, while amounts of additional compensation tend to be expressed as a fixed penalty.<sup>777</sup>

This suggests that, while the institutions for deciding *poinai* and the vocabulary for calculating them were similar to those found in Homeric offers of compensation, legislators were able to produce increasingly complex and variegated legislation, to account for a number of variables and to direct judicial procedures.<sup>778</sup> Inscribing such complex rules and publishing them on monuments meant that there was a physical yardstick for penalties to be set against and calculated by and must have limited the discretionary power of adjudicators and the scope for *poinai* to be negotiated settlements. The fixed sums and multipliers we find on legal inscriptions seem to have stratified *poinai* not only according to the severity<sup>779</sup> and duration of the dispute,<sup>780</sup> but also by the relative status of the individuals concerned.<sup>781</sup>

### *Law and Religion*

The appearance of legal writing with its sense of human agency behind the *polis* and its laws<sup>782</sup> also seems to have changed the relationship between communities and their gods. While gods continued to be called upon to protect the laws and they continued to rely on oaths and rituals to ensure that justice was served, written laws came to be the primary source of legal rules and their sense of human authorship and distinct moments of creation<sup>783</sup> meant that human rules could be distinguished from their unwritten counterparts and could be used

---

<sup>777</sup> Sealey, R. (1994, pp. 41-43)

<sup>778</sup> This use of multipliers can also be clearly seen at *IC IV 10*, 41, 43

<sup>779</sup> Cf. *GP Elt2*

<sup>780</sup> Cf. Appendix 3 §5 (*see pp. 152-55*) where the penalties are escalated according to the length of time a victim is unlawfully held

<sup>781</sup> Cf. the Gortynian rules on sexual assault (col.II 2-45) we find set penalties for three distinct classes: slaves, *apetairoi* and free, suggesting both a fixity in the setting of penalties and a clear delineation of these categories of person. Davies, J. K. (1996, pp.41-42), (Gagarin, M. & Perlman, P. J. (2016, pp.79-84)). Likewise Athenian law grouped people into citizens, metics and slaves. Ober, J. (2015, pp.127-55), Morris, I. (2009, pp.73-75), Hansen, M. H. & Nielsen, T. H. (2004, p.31), Sealey, R. (1994, p.152), Murray, O. (1990, p.140), Gagarin, M. (1986, p.80) While this emphasis on status was not a product of writing, written law was appearing at a time when the idea of ‘citizenship’ linked one’s status and identity more to the *polis*, than to one’s ancestry and was defined in opposition to being a foreigner (*xenos*, *metoikos* or *apetairos*) or slave (*doulos*).

<sup>782</sup> *See p. 184n.*

<sup>783</sup> Ostwald, M. (1986, pp.87-94)

to legislate on religious matters when it was felt to be necessary or if it suited the *polis*' purposes. We therefore see evidence of written laws regulating cult practices, temple hierarchies and religious rites, showing that *poleis* were keen to protect the rituals of the gods, and were also mindful of the social effects that such observances could have. We even see state oaths and curses using similar diction to written laws and oaths suggesting that *poleis* were harnessing the power of the gods to enforce their own rules and embed them in the public consciousness.

A series of inscriptions from late 7<sup>th</sup> century Tiryns<sup>784</sup> shows that one of the earliest applications of written law was in regulating temple cults and demonstrates the power of legal writing to influence religious matters and the interest the community was taking in regulating priests, much as they were imposing limits on judicial offices. The text details a number of officials seemingly involved in the performance of sacred rites (the *platiwoinarchos*, the *platiwoinoi*, and the *hieromnamon* in particular) with the *hieromnamones* having the right to take fines from the *platiwoinoi*.<sup>785</sup>

[--]ρα[--] || φετειον ταιδε || [..<sup>3-4</sup> ..] αιφρε[.]γ τὸνς

πλ || [ατι] φοινάρχωνς ἐνς.. [---].ν δαρ (?) οἴφακτον  
 ταμιον || [τὸν]ς πλατιφοίνον [ς || φ]εκάστε. αἰ μ'  
 ἐξσθ[ο]άσαιεν ὄφλεν ἐν [ς || Δί]φα κάθαναίαν  
 τριαάροντα μ[ε] δίμμονος α [-|--]ασιον || [..]ποσταντον  
 πλατιφοιναρχον ια δ|| [---]...[---] || [ἀ]ποδόμεν τοι  
 ἱερομναμονι τὸνς πρα[---]ς. τὸν δ' ἱερομναμόν[α  
 ---]εν τ|ὰ δαμόσια *hó*||πι κα δοκεῖ τοι δάμοι  
 ἀλυσίαν θεν.(?)ια. αιδ.[---]απα θαυεατρα α. . vacat

*...In the years...to the platiwoinarchoi... submit the fine (tamion = ζημια) to the platiwoinarchoi each time. And if he does not exact the penalty let him owe unto Zeus and Athena thirty medimnoi (of grain?)... the outgoing ([α]ποσταντον?) platiwoinarchos...let him hand over the goods to the hieromnamon. And the*

<sup>784</sup> SEG 30.380

<sup>785</sup> Osborne, R. (1996, pp. 186-7)

hieromnamon...*in the public (?) whatever the people decide, the assembly ... theatre*

...

The casuistic language of the inscription sets in stone clear responsibilities the officials have for regulating this hierarchy and prescribes that material fines be used to do so. Despite its fragmentary preservation, the inscription's length and the fact that it specifies a penalty for an official not exacting a fine suggests that it represents a self-regulating process with fixed and quantified penalties. The text also uses the indefinite expression 'ὅ||πι κα δoκει τοι δαμοι', 'whatever the people think appropriate' to emphasise the power of what seems to be a popular assembly - 'damosia' - in determining the responsibilities of the *hieromnamon*.<sup>786</sup> Like the Dreros inscriptions, this text's references to the *damos* suggest that popular, civic involvement exerted significant influence over proceedings<sup>787</sup> alongside the religious hierarchy, and thus the inscription seems to use language that demands accountability to the community through its clear obligations.<sup>788</sup> This suggests that the *polis* of Tiryns saw the administration of this priestly cult as integral to the governance of the state and was beginning to use inscriptions to regulate religious hierarchies in much the same way as they were used to control judicial ones at Dreros.<sup>789</sup>

When rules regulating the activities at festivals or the work of priestly cults were written down on behalf of the *polis*, it was probably because they were felt to be in the public interest, whether to keep the community free from *miasma*,<sup>790</sup> to limit the behaviours of citizens at religious occasions<sup>791</sup> or because the *polis* was declaring its own responsibility for particular customs and observances.<sup>792</sup> Solon is supposed to have legislated for a number of religious crimes like misconduct during a festival,<sup>793</sup> speaking ill of the dead,<sup>794</sup> prescribing

---

<sup>786</sup> van Effenterre, H. & Ruzé, F. (1994, pp.294-96)

<sup>787</sup> Papakonstantinou, Z. (2008, pp. 52-5, 93-4), Hölkenskamp, K.-J. (1992, pp. 80-81)

<sup>788</sup> Wilson, J.-P. (2009, p. 552), Morris, I. (2009, p. 72), Perlman, P. J. (2004, p. 193), Ober, J. (2005, p. 397-8), Thomas, R. (2005, pp. 53-4; 1996, pp. 25-6), Gagarin, M. (1986, pp. 72-80)

<sup>789</sup> A similar type of decree involving more ancillary religious officials can be seen in an early 5<sup>th</sup> century text from Eleutherna (*Nomima* I.26, *GP* Ele16 Ab, *IC* II 12.16 Ab) which seems to involve the regulation of harpists and may have been part of a collection of rules ensuring that standards in religious festivals are maintained. Gagarin, M. & Perlman, P. J. (2016, p.243)

<sup>790</sup> Parker, R. (2004, pp.57 & 63-65)

<sup>791</sup> Parker, R. (2004, pp.61-62) cf. *Plu. Sol.*21.5, 23.3, *Lyc.*27

<sup>792</sup> Parker, R. (2005a, pp.63-70), de Polignac, F. (2009, p.430)

<sup>793</sup> Parker, R. (2005a, pp.63-64), Fisher, N. (1990, p.134) *Dem.*21 cf. *Andok.*1.111-12,

<sup>794</sup> *Plu. Sol.*21, Leão, D. F. & Rhodes, P. J. (2015, pp.49-53)

precise fines for the removal of olive trees without good reason<sup>795</sup> or for uttering insults in holy places.<sup>796</sup> Likewise, Athenian homicide law included prohibitions against participation in certain religious rites, showing both that the crime of homicide was seen as an offence against the gods and that the city was taking a direct interest in legislating to prevent *miasma*.

ἐν τοίνυν τοῖς περὶ τούτων νόμοις ὁ Δράκων φοβερὸν κατασκευάζων καὶ δεινὸν τὸ τιν' αὐτόχειρ' ἄλλον ἄλλου γίνεσθαι, καὶ γράφων χέρνιβος εἴργεσθαι τὸν ἀνδροφόνον, σπονδῶν, κρατήρων, ἱερῶν, ἀγορᾶς, πάντα τᾶλλα διελθὼν οἷς μάλιστ' ἂν τις ᾤετ' ἐπισχεῖν τοῦ τοιοῦτόν τι ποιεῖν, ὅμως οὐκ ἀφείλετο τὴν τοῦ δικαίου τάξιν, ἀλλ' ἔθηκεν ἐφ' οἷς ἐξεῖναι ἀποκτινύναι, κἂν οὔτω τις δράσῃ, καθαρὸν διώρισεν εἶναι.<sup>797</sup>

*Now Draco, in the laws about such things, marked the terrible wickedness of homicide by banning a murderer from the lustral water (chernips), the libations (spondai), the mixing bowls (krateres), the sacrifices (hiera) and the market-place (agora); including everything that he thought would keep someone from doing such a thing; but he nonetheless did not withhold the right of justice; but he set out when one might be permitted to kill and proclaimed that someone who acted thus was clean (katharos).*

Regardless of whether these prohibitions were intended as an additional deterrent, as Demosthenes argues, the declaration that one who killed lawfully was ritually untainted by the killing (*katharos*) and the list of specific rites that a homicide was barred from suggests that the *polis* was able to exercise the power that writing afforded to declare what was and was not permissible on both divine and civic levels.<sup>798</sup>

Several texts even describe procedural rules for performing religious rites, showing the influence that written law could have on ritual processes and the role of codification in

---

<sup>795</sup> Dem.43.71

<sup>796</sup> Plu. *Sol.*21

<sup>797</sup> Dem.20.158 cf. also the role of the *Prytaneum* in scapegoating objects that cause accidental injury cf. Dem.23.76, *Ath. Pol.*57.4, Pollux 8.120 Leão, D. F. & Rhodes, P. J. (2015 pp.32-33)

<sup>798</sup> Cf. Also Dem.59.73-87 which references a law purportedly set down in the time of Theseus specifying that the *basileus* should marry a virgin and another which allows even metic and slave women to attend religious ceremonies but bars anyone found guilty of committing adultery on pain of 'anything short of death'.

allowing the *polis* to dictate when and how religious observances should take place. One 5<sup>th</sup> century Megarian inscription uses the formalised hypothetical diction found in laws to set out the ritual process of obtaining purity, possibly after committing homicide.<sup>799</sup> The inscription opens with a series of indefinites allowing any man (*anthropon*) to obtain purity from the furies (*elasteron*) whenever and wherever he wishes, while the apodosis offers precise directions on the ritual before finally allowing him to be spoken to, eat and sleep wherever he wishes suggesting perhaps that he now is free from the *miasma* that might see him rejected from certain places. Another text from Keos combines the procedural and substantive roles of religious laws, prescribing the written rules (*nomoi*) on the proper conduct at funerals,<sup>800</sup> specifying the precise stages of the ritual, the values of different sacrifices and the roles of different individuals.

The supposedly Solonian provisions on what was permitted at funerals also shows an interesting codification of practice that appears to have regulated behaviour in religious contexts, with their precise substantive rules on how ostentatious a funeral could be.<sup>801</sup> Again, it is unclear whether the motivation for setting such restrictions was purely a matter of preventing divine wrath or whether it was part of a desire to restrain displays of excess,<sup>802</sup> however what it does show is the specific levels of detail that could be preserved in the regulation of religious rites and the capacity of the *polis* to micro-manage the behaviour of citizens.

ἐναγίζειν δὲ βοῦν οὐκ εἶασεν, οὐδὲ συντιθέναι πλέον ἱματίων τριῶν, οὐδ' ἐπ' ἀλλότρια μνήματα βαδίζειν χωρὶς ἐκκομιδῆς. ὧν τὰ πλεῖστα καὶ τοῖς ἡμετέροις νόμοις ἀπηγόρευται.<sup>803</sup>

*The sacrifice of an ox at the grave was not permitted, nor the burial with the dead of more than three changes of raiment, nor the visiting of other tombs than those of their own family, except at the time of interment.*

---

<sup>799</sup> *SEG* 43.630 Colvin, S. (2007, pp.146-47), cf. also *GP* G76b (preparing a corpse for burial), G14b1, Ele16Ab4-5 (initiations?), A2, A5, A6.4-5, Da1, Dr6, Dr7, G65.13-14, G72.10.39 (offerings), Ele1, Gagarin, M. & Perlman, P. J. (2016, pp.126-28 & 134), Perlman, P. J. (2000, p.74)

<sup>800</sup> *IG* XII 5.593 Colvin, S. (2007, pp.120-21)

<sup>801</sup> *Plu. Sol.*12, 21

<sup>802</sup> Parker, R. (2004, pp.61-62), Hertzoff, A. (2008, p.359)

<sup>803</sup> *Plu. Sol.*21.5

Likewise Solon appears to have made laws on the relative values of sacrifices which show the utility of inscriptions to fix details like the values of offerings or the dates on which festivals are conducted,<sup>804</sup> much as it could ascribe tariffs for different types of offences.

εις μὲν γε τὰ τιμήματα τῶν θυσιῶν λογίζεται πρόβατον καὶ δραχμὴν ἀντὶ μεδίμνου: τῷ δ' Ἴσθμια νικήσαντι δραχμὰς ἑταξεν ἑκατὸν δίδοσθαι, τῷ δ' Ὀλύμπια πεντακοσίας: λύκον δὲ τῷ κομίσαντι πέντε δραχμὰς ἔδωκε, λυκιδέα δὲ μίαν, ὧν φησιν ὁ Φαληρεὺς Δημήτριος τὸ μὲν βοὸς εἶναι, τὸ δὲ προβάτου τιμὴν. ἄς γὰρ ἐν τῷ ἑκκαιδεκάτῳ τῶν ἀξόνων ὀρίζει τιμὰς τῶν ἑκκρίτων ἱερείων, εἰκὸς μὲν εἶναι πολλαπλασίας, ἄλλως δὲ κάκειναι πρὸς τὰς νῦν εὐτελεῖς εἰσιν.<sup>805</sup>

*In the valuations of sacrificial offerings, at any rate, a sheep and a bushel of grain are reckoned at a drachma; the victor in the Isthmian games was to be paid a hundred drachmas, and the Olympic victor five hundred; the man who brought in a wolf, was given five drachmas, and for a wolf's whelp, one; the former sum, according to Demetrius the Phalerian, was the price of an ox, the latter that of a sheep. For although the prices which Solon fixes in his sixteenth axon are for choice victims, and naturally many times as great as those for ordinary ones, still, even these are low in comparison with present prices.*

The level of prescriptiveness in these texts shows how written law enabled rituals to be precisely regulated and cemented so that the *polis* could control them and maintain their consistency. While this may initially have been a codification of existing practice,<sup>806</sup> it appears to have become a new source of authority behind the conduct of religious activities, recording details – like the values of sacrifices or the dates on which they were to be made – in the fabric of the city itself. This can be seen in the arguments given in Lysias 30.17-18 where, in his incredulity at being accused of heresy, the speaker points to the laws inscribed on the *kyrbeis* as the place where the dates were recorded and as the guide that generations of Athenians had been following. Written law therefore seems to have entered into a reciprocal relationship with religion, drawing on associations with the gods and divine *dikē* for authority

---

<sup>804</sup> Leão, D. F. & Rhodes, P. J. (2015, pp.139-47) In particular, Lys. 30.17-18 implies that even the calendar dates of festivals can be found on the *axones* and *kyrbeis* alongside the other legislation therein, and argues that this had become the primary authority for their ancestors on the scheduling of rituals.

<sup>805</sup> Plu. *Sol.*23.3

<sup>806</sup> Leão, D. F. & Rhodes, P. J. (2015, p.140)



and protection, but itself becoming the ultimate source for proper conduct of religious rituals and helping to keep *poleis* free from *miasma*.

We also see inscribed procedural rules to harness divine wrath as a sanction in its own right, suggesting that the *polis* was using written legal language in inscribed curses to involve the gods in penalising offences against the state, much as they were using written legislation to regulate their judicial procedures. While such texts are not laws *per se*, lacking the enforceability of true legislation, they demonstrate the ways in which a *polis* could harness both divine powers and the diction of written law to deter would-be offenders. A fragmentary 6<sup>th</sup> century law from a temple of Hera in Argos<sup>807</sup> calls for ‘the curse of Hera’ on those who damage the tablet, alongside exile and the selling of all their property,<sup>808</sup> and judicial curses were an important part of the ritual safeguards afforded to Athenian law and justice,<sup>809</sup> suggesting that such magico-religious penalties could be a part of the *polis*’ articulation and enforcement of its laws.

The famous ‘Teos curses’<sup>810</sup> also show how the physical presence of normative inscriptions could be used to deter those who would do wrong against the *polis* and they share the same formalised normative language of written law to do so. The text describes itself as an *eparan* (curse) and the apodosis of each curse concludes with the formulaic threat that the ill-doer be destroyed along with his whole family (ἀπόλλυσθαι καὶ αὐτὸν καὶ γένος τὸ κένο)<sup>811</sup> for a number of crimes against the state including the manufacture of harmful drugs (*pharmaka dēlētería*) against the Teans,<sup>812</sup> the failure by the *timocheontes* to read out the curse at the correct place during the allotted festivals<sup>813</sup> and the destruction of the *stele* itself.<sup>814</sup> Its language is similar that used in written law to express the dire consequences that await those who plot harm against the city and its first provision is the closest thing we have to a ‘law’ that forbids the use of magic or poisons.

---

<sup>807</sup> IG IV 506, *Nomima* I.100

<sup>808</sup> Rigsby, K. J. (2009, pp.73-75), van Effenterre, H. & Ruzé, F. (1994, pp.354-56) cf. also Appendix 3 §3 ll.11-12

<sup>809</sup> Thomas, R. (1992, pp.80-81) cf. Dem.19.70, 20.107 for role of curses and other safeguards alongside law in the functioning of Athenian democracy - NB no written public curses in Athens.

<sup>810</sup> Appendix 3 §9

<sup>811</sup> Cf. The divine threat in Hesiod’s sequence of *gnōmai* at *Op.*327-34 (see pp.114-16) or the formula *moth yumath* in the Deuteronomic curses (see pp.129-30)

<sup>812</sup> Side A ll.1-5

<sup>813</sup> Side B ll.29-35

<sup>814</sup> Side B ll.35-41

ὅστις φάρμακα δηλητη-  
 ρια ποιοῖ ἐπὶ Τηίοισι-  
 ν τὸ ξυνὸν ἢ ἐπ' ἰδιώτη, κ-  
 ῖενον ἀπόλλυσθαι καὶ α-  
 ὑτὸν καὶ γένος τὸ κένο

*Whoever manufactures destructive  
 substances for use against the Teans, as a  
 whole or against an individual, let him be  
 destroyed, both himself and his  
 descendants.*

It is also possible that, while this text explicitly refers to itself as a curse and the penalty lacks the specificity of most legal provisions, it could still have been acted upon if an offender was found guilty, much as the ‘curse of Hera’ could be used alongside human penalties.<sup>815</sup> This suggests that religious beliefs could be combined with the written word and the form of legal writing to create formalised, threatening divine penalties much as laws prescribed human ones.<sup>816</sup>

A similar blending of the legal and religious deterrent power of the law can also be seen in another inscription of similar date from Teos.<sup>817</sup> This inscription uses the same formulaic penalty as the Teos curses and also prescribes that the *timouchos* and other officials read it out. However, the text further combines the forms of curses, oaths and laws as it appears to describe a legal procedure, specifying the number of votes required from the cities of Teos (200) and Abdera (500) for either the *polis* or the official to take a number of actions.<sup>818</sup> These actions are articulated in the first person; a peculiar formulation which seems, as Graham has argued, to be taking the form of a ‘citizens oath’<sup>819</sup> and the requirement that the *timouchos* and the treasurer read from the inscription rather suggests that it is these individuals who are required to take the oath and to pursue the matter if the requisite number of votes is cast for it. The text is thus itself a cause for legal action as well as bringing curses on those who fail in their duties and thus combines the normative force of both laws and solemn oaths.

---

<sup>815</sup> The jussive infinitive *apollusthai* could equally mean ‘let him be executed, himself and his family’, a possibility that Collins (2008, p.137) has argued is mirrored in the fate of Theoris and her family who were reputedly all killed in Athens for her peddling in *pharmaka* and *epoidai*.

<sup>816</sup> Meiggs, R. & Lewis, D. (1969, pp.62-65), Thomas, R. (1992, p.81; 1996, p.28; 2005, pp.55-56), Van Effenterre, H. & Ruzé, F. (1994, pp.368-69) Parker, R. (2005a, pp.76-77) Collins, D. (2008, pp.148-50)

<sup>817</sup> SEG 31.985, *Nomima* I.105

<sup>818</sup> Side A 13-22

<sup>819</sup> Graham, A. J. (1992, pp.54-56)

The effect of inscribing oaths and curses and using the same casuistic language found in written laws appears both to have provided a psychological deterrent against dishonest practices in the knowledge that the gods could see, and reinforced existing beliefs that were fundamental to the proper functioning of the justice systems of early *poleis*. Moreover, the regular recitation required by the two Teos texts and in the oaths and curses used by Athenian jurors and magistrates demonstrates the control the *polis* was exerting in dictating both the legal and ritual dimensions of these inscriptions, impressing their requirements on speakers and listeners alike and reinforcing the divine powers that the *polis* could call on.<sup>820</sup>

### *Collection, Organisation and Display*

The accretion of inscribed legislation and the different approaches of *poleis* to the publication, collection and display of laws would have contributed significantly to the ways in which the law was used and developed and would also leave its mark on the identity of these communities and what it meant to be a citizen of them.<sup>821</sup> The monuments on which legal texts were inscribed would have had a significant impact on the cultural perspectives of those who grew up in cities like Athens and Gortyn, and been conspicuous by their absence in a state like Sparta. Moreover, their significance would surely have been enhanced by the sites in which they were displayed, benefitting from religious associations of being attached to sacred buildings, or from the civic and practical functions of law courts and *agorai*.

The fact that law is never static means that over time new inscriptions supplemented or replaced earlier laws and collections, which would themselves have formed more organic networks of rules that punctuated the physical, spiritual, political and normative geography of the *polis*. Drakon's homicide law seems to have implicitly made use of penalties that were already in use and are comparable to those attested in Homer,<sup>822</sup> but it also appears to show an awareness of its place in a wider context of written rules. The introductory *καί* at the start of the first provision suggests either that there were some preceding clauses on voluntary killing or that the same law governed both 'willing' and 'unwilling' murder.<sup>823</sup> Moreover, the

---

<sup>820</sup> Van Effenterre, H. & Ruzé, F. (1994, p.368)

<sup>821</sup> Gagarin, M. & Perlman, P. J. (2016, p.130-33)

<sup>822</sup> See pp.195-96 Gagarin, M. (1981, p.19), Humphreys, S. C. (1988, p.467)

<sup>823</sup> Leão, D. F. & Rhodes, P. J. (2015, p.22), Thomas, R. (2005, pp.53-54). Humphreys (1988, p.467) has even argued, that 'willing' homicide was not legislated by Drakon at all, raising the possibility of existing processes being left untouched.

fact that it has been transplanted into different bodies of law by both Solon<sup>824</sup> and the late-5<sup>th</sup> century *nomothetai*,<sup>825</sup> and the attendant anxieties in the last years of the Peloponnesian war over the potential for individual laws to conflict,<sup>826</sup> shows that the production of written law was also understood to be a continuous process with lawmakers drawing on preexisting norms, both written and oral, incorporating them into their compilations and fitting new laws into existing matrices of rules.<sup>827</sup> This can also be seen in the inscription from Lokris, which, as early as the 6<sup>th</sup> century, prescribes that those who transgress the law should be punished *κατὰ τὸν ἀνδρεφονικὸν τετμ|όν* ‘in accordance with the law on homicide’, a cross-reference which appears to underscore the seriousness of the penalty as the details of what should be done are actually included in the text, and which shows an awareness that this text was part of a web of rules which could be used in support of one another.

In several *poleis* this was manifested in the physical fabric of the city itself as legal texts began to cluster in key locations and collections of laws may have grown organically from this tendency to put laws in significant places. The management of this process demonstrates significant variations in the legal cultures and characters of different *poleis* and may well have had profound effects on the cultural impacts of law and the directions their legal systems would take. Dreros seems to have inscribed its earliest laws on the wall of a temple, possibly associated with Apollo, perhaps feeling that the religious connotations of its context as well as the opening lines of its longest rule would add weight to the laws

---

<sup>824</sup> (Plu. *Sol.*17, *Ath. Pol.*7.1) Gagarin, M. (1981, pp.18-21) The transplantation of provisions can also be seen in the tradition that Solon travelled extensively, even introducing a law from Egypt forcing individuals to declare the sources of their wealth (Hdt.2.177.2), Leão, D. F. & Rhodes, P. J. (2015, pp.29-32, 109-110). The idea of travel and learning from other communities seems to have been a common motif in lawgiver traditions – Lycurgus, similarly was said to have been impressed with the laws of Crete and been inspired to create his militaristic Spartan society by the Egyptian caste system (Plu. *Lyc.*4)

<sup>825</sup> Carey, C. (2013, pp. 2-3, 13), Gagarin, M. (1981, pp.5-20, 147-50), Dem.23.28 also contains a clause that seems to have been a subsequent amendment to the original *axon*, Philips, D. (2013, pp.55-56)

<sup>826</sup> Philips, D. (2013, p.14), Sickinger, J. P. (2007, pp.101-105), Todd, S. C. (1996, pp.123-26), Humphreys, S. C. (1988, pp.476-77), MacDowell, D. M. (1978, pp.50-52) These reforms included the appointment of *nomothetai* to reform and reorganise Athens’ existing laws, the introduction, suspension under the oligarchic coup of 411 (cf. Thuc.8.67.2) and reinstatement of the *graphē paranomōn* and legislation requiring that contradictory legislation be repealed or replaced Andok.1.71-89, Dem.18, 20.93, 24.33, 24.42, Aeschin. 3.38-39, Lys.30

<sup>827</sup> Kapparis, K. (2019, pp.1-2), Carey, C. (2013, pp. 3-10), Thomas, R. (2005, pp.49-54), (Gagarin, M. (1981, p.19)

themselves.<sup>828</sup> Gortyn seems to have gradually developed similar collections to those found in Dreros<sup>829</sup> into ‘law codes’ in the 5<sup>th</sup> century, putting large quantities of legislation into single documents inscribed on stone monuments in their *agora*. The development of these codes can be charted through the 6<sup>th</sup> and 5<sup>th</sup> centuries from individual pieces of legislation enacted and proclaimed at the same time to more systematic monuments culminating in the twelve columns of the so-called ‘Great Code’.<sup>830</sup>

While this is by no means a comprehensive system of rules, Gagarin has shown that it does demonstrate the kind of efforts which would have made this a useful reference work for those involved in litigation, through the grouping of related pieces of legislation and the distinctive visual and linguistic features which mark out its various provisions.<sup>831</sup> There is also evidence of significant editing and reproduction of such inscriptions, with Gortynian masons erasing and amending texts, adding new provisions after the monument was erected or incorporating updated versions of old legislation into new compilations of laws.<sup>832</sup> In particular, Davies has suggested that *IC IV 81*, an inscription relating to disputes over secured debts, may have been incorporated into a larger compilation on the evidence of an almost identical section in *IC IV 75A* and it is possible that the laws on damage done by a slave in the ‘Great Code’ were intended to replace the text of another earlier inscription (*IC IV 41*). Likewise, the complexity of the Gortynian rules on the ownership and treatment of slaves and their appearance in several collections,<sup>833</sup> often with subtle amendments, suggests that they were often topics for revision and republication and were therefore issues that lawmakers continuously had to grapple with, and which were felt to be sufficiently important to record

---

<sup>828</sup> Van Effenterre, H. (1937, p.1), Papakonstantinou, Z. (2008, p.54), Gagarin, M. & Perlman, P. J. (2016, p.199)

<sup>829</sup> Perlman, P. J. (2000, pp.60-61), Gagarin, M. (2004, p.177)

<sup>830</sup> Davies, J. K. (1996, pp.34-36)

<sup>831</sup> Gagarin, M. (2008, pp.50-56, 123)

<sup>832</sup> Davies, J. K. (1996, pp.37-46), Gagarin, M. (1982, pp.135-37; 2008, pp.127-28, 170-72), Thomas, R. (2005, pp.47-48)

<sup>833</sup> The *polis* of Gortyn seems to have been especially keen to clarify the rules on the ownership and treatment of slaves, regulating their re-sale (*IC IV 41.4*, *IC IV 72.10.25-32*), setting the liability for a slave’s misdemeanours (*IC IV 72.7.10-15*), the status of offspring born of slaves married to free persons (*IC IV 72.6.56-7.10*), and making provision for the protection of indentured serfs and slaves against unscrupulous masters. Cf. *IC IV 41.5* provides immunity if an indentured serf has harmed someone on his master’s orders, while 41.6 requires that the master brings suit if someone should harm an indentured person in his charge. *IC IV 47* seems to be a revision of this inscription which also addresses the death of indentured persons and makes distinctions between old and new masters when such a person has changed hands. *IC IV 43 Ab* penalises those who acquire slaves unlawfully and strip them of their clothing using multipliers to connect it with the laws on free persons.

and publish in writing.<sup>834</sup> This suggests that Gortynian lawmakers were aware of the need to update and amend the law and made efforts to compile laws rather than simply allowing successive inscriptions to accumulate.<sup>835</sup>

The legendary ‘lawgivers’ of 6<sup>th</sup> century Athens also seem to have been engaged in the codification of legal compilations with Drakon and Solon both supposed to have created collections of rules, written on wooden panels (*axones* and *kyrbeis*) for public display.<sup>836</sup> However, by the late 5<sup>th</sup> century specific buildings, courts and institutions had emerged, both around the *agora* and elsewhere, to deal with particular areas of *polis*-life and these seem to have been where subsequent laws pertaining to those areas were put up.<sup>837</sup> This led to a vast body of legislation developing piecemeal in a variety of locations:<sup>838</sup> laws governing business transactions could be found in the *agora*, those on coinage were moved to the mint,<sup>839</sup> and the laws of Solon and Drakon were transferred from the Western side of the *agora* to the *Stoa Basileios*.<sup>840</sup>

This type of organisation was not without its problems, as efforts at the turn of the 4<sup>th</sup> century to rectify the issues of conflicting legislation or gaps in the law suggest,<sup>841</sup> but it appears to have created an enduring association of *nomos* with the physical geography of the city,<sup>842</sup> as complexity emerging in the legal system was reflected in the locations of its laws. Consequently, the navigation of legislation became increasingly connected to the judicial

---

<sup>834</sup> *IC IV* 41, 43, 47 & 72 (1.2-2.2, 2.11-16, 6.56-7.15, 10.25-32) cf. Gagarin, M. & Perlman, P. J. (2016, pp.297-301, 318-21), Davies, J. K. (1996, pp.41-53)

<sup>835</sup> Davies, J. K. (1996, pp. 46-47)

<sup>836</sup> Stroud, R. S. (1968, pp.60-64), Gagarin, M. (1981, pp.21-28), Sickinger, J. (2004, pp.94-96), Thomas, R. (2005, pp.44-45), Robertson, N. (1986, p.149), Kapparis, K. (2019, p.34)

<sup>837</sup> Lanni, A. (2006, pp.31-2), Roebuck, D. (2001, pp.37-39)

<sup>838</sup> Osborne, R. (1999, pp.341-49)

<sup>839</sup> *Ath. Pol.* 35.2 cf. *SEG* 26.72.44-7

<sup>840</sup> Osborne, R. (1999, pp.346-7), Richardson, M. B. (2000, p.601), Robertson, N. (1986, p.149), Sickinger, J. P. (2004, pp.94-97)

<sup>841</sup> Sickinger (2007, pp.101-110) and Rubinstein (2007, pp.113-23) both point to evidence of a number of measures introduced both at Athens in the 4<sup>th</sup> century (cf. *Dem.*20.93, 24.33, *Aeschin.*1, 3.38-39, *Lys.* 30, *Andok.*1.87, *IG II<sup>2</sup>* 140) and inscriptions in other *poleis* which show both a desire to ensure consistency within the law (cf. *IG* 9.1<sup>2</sup>.2.583, which specifies a time when amendments can be proposed, *IG* 12 Suppl. No. 364 ll.11-13, which requires that it supersedes earlier conflicting laws or Appendix 3 §4 ll.32-37 which forbids its damage or repeal) and a recognition that not all eventualities could be accounted for by individual legislators (cf. *Nomima* I.43, 108, 109 which allow themselves to be amended where necessary).

<sup>842</sup> Osborne, R. (1999, pp. 346-50), Sickinger (2004, pp.95-96 & 102), MacDowell, D. M. (1978, p.45), Cartledge, P. (1990, pp.54-55)

topography of the *polis*,<sup>843</sup> with its array of courts, attendant officials and procedures to address specific types of dispute.<sup>844</sup> This association with space had a symbolic as well as practical function; by moving the laws of Solon and Drakon to the *Stoa Basileios* the Athenians were making them part of the physical gateway to the Areopagus where cases of homicide were tried,<sup>845</sup> and any laws that did not have a specific attachment to a particular site were placed in the acropolis, presumably for the divine protection conferred by its sacred associations.<sup>846</sup> Even after the creation of a centralised archive at the *metrōon* at the end of the 5<sup>th</sup> century<sup>847</sup> and efforts to remove contradictions and fill gaps in the city's legislation,<sup>848</sup> the monumentalisation of law and cultural resonance of its geographical organisation continued to be a feature of Athenian legal culture, with new legislation generally put up in all the courts to which it pertained, and the continued references by orators to the sites of legal texts speaks of the efficacy of the older system and also its symbolic power over the archive.<sup>849</sup>

### III. The Cultural impact of the Law

Written laws were not just sources of rules, but also came to have a significant cultural impact on the cities that produced them, not only by their monumental appearance, but also through their integration into the storytelling traditions of Greek *poleis*. Legal compilations were impressive monuments in their own right through their physical presence, distinctive rules and the tales that grew up around their origins. Obedience to the laws seems to have defined what it meant to be citizens of many Greek *poleis* and it is likely that this would have been cemented by the spectacle of inscriptions, but it is also evident in their

---

<sup>843</sup> Sickinger, J. P. (2004, pp.94-97)

<sup>844</sup> Lanni, A. (2006, 16-18), Sealey, R. (1994, p.126), Todd, S. C. (1993, pp.160-63), MacDowell, D. M. (1978, pp.25-33)

<sup>845</sup> Wohl, V. (2010, p.55), Murray, O. (2000, pp.236-37) cf. Dem.25.70

<sup>846</sup> Osborne, R. (1999, pp.346-47)

<sup>847</sup> This seems to have been done because the gradual accumulation of legislation had led to a legal system that was too disparate and unwieldy to collate into a single monument. Kapparis, K. (2019, pp.2-3, 35), Canevaro, M. (2016, pp.39-56), Lanni, A. (2006, pp.37-38), Carey, C. (1994, pp.172-73), Cf. Andok 1.83-84 In fact the effort involved seems to have been tremendous, to the point that one of the *nomothetai* tasked with its creation was indicted for the length of time he took to complete it MacDowell, D. M. (1978, pp.46-48), cf. Lys. 30

<sup>848</sup> Sickinger, J. P. (2007, pp.100-110)

<sup>849</sup> Sickinger, J. P. (2004, pp.95-98), Todd, S. C. (1993: 55-58), Thomas, R. (1989, pp.68-83)

belief in the unified spirit of the law embodied in their legends and distinctive institutions.<sup>850</sup> The inclusive language of “Perikles”’ funeral oration suggests that the Athenians’ obedience to the laws was both a collective endeavour and a source of the *polis*’ sense of identity.<sup>851</sup> At Athens, this pride in the laws would manifest itself in their sense of *nomoi* as an important part of a citizen’s education and can also be seen in the speeches that provide a window on the ways legislation was interpreted and applied in their courts. Moreover, the ubiquity of legends about ‘lawgivers’ suggests that the cultural impact of law was felt across the Greek world and was a fundamental way in which the physical laws of a city came to be intertwined with its identity and wider normative culture.

### *Lawgivers*

Tales about the creation of laws turned legal texts into monuments of key moments in the history of a given *polis*, often carrying folk-memories of times of crisis and the wisdom of their creators that added to their enduring legitimacy.<sup>852</sup> The production of legal monuments containing *nomoi* with an identifiable moment of creation brought an understanding that law had both a history<sup>853</sup> and a human source and consequently the character of the *nomothetēs* (‘lawgiver’) appears to have become a significant presence in the normative cultures of the *poleis*.<sup>854</sup> The influence of these figures stretched far beyond the creation of legal text, providing an authorial voice through which the law could be interpreted and propagated, and whose legends, aphorisms and poetry became a source of normative guidance in their own

---

<sup>850</sup> Thomas, R. (1992, p.23), Harris, E. M. (2004, p.19) cf. Thuc.2.37.3, Lys.2.19. Herodotus (7.102-4) articulates the perception that even the Spartans, despite eschewing written rules still prided themselves in their respect for their tradition of education and laws (the *rhētras*) established by their legendary lawgiver Lycurgus. Cf. Plu. *Lyc.*13-29

<sup>851</sup> Thuc.2.37.3 cf. Lys.2.19, Hdt.7.102-4, Pind. fr.169a Thomas, R. (1992, p.23), Harris, E. M. (2004, p.19), Kapparis, K. (2019, pp.21-22)

<sup>852</sup> Arist. *Pol.* 1273b-1274b lists in addition to Solon of Athens and Lycurgus of Sparta, Zaleucus of the Epizephyrean Lokrians, Charondas of Catana, Onomacritus of Lokris, Philolaus the Corinthian lawgiver for Thebes, Pittacus of Mytilene and Androdamas in Thrace. cf. Hdt. 5.28-29, 4.161, *Ath. Pol.* 2-13, 22, 41.2, Plu. *Sol.*13-25, *Lyc.*4-31, cf. Hdt. 5.28-29, 4.161, Plat. *Laws* 625c-e Ober, J. (2015, pp.123-24), Thomas, R. (2005, pp.43-47), Ostwald, M. (2000, pp.385-86), Sealey, R. (1994, pp.25-29), Humphreys, S. C. (1988, pp.468-69), Gagarin, M. (1986, pp.58-80), Kapparis, K. (2019, p.34)

<sup>853</sup> Ostwald, M. (1986, pp.88-89)

<sup>854</sup> Kapparis, K. (2019, pp.1-2), Ober, J. (2015, pp.123-24), Murray, O. (2000, pp.236-37), Raaflaub, K. A. (2000, p.43), Rahe, P. A. (1984, pp.262-66)



right, echoed on the lips of speakers in debates at symposia<sup>855</sup> and in law courts before passing into histories, philosophies and biographies as part of the *polis*' own mythology.

Solon's references to his reforms in his own poetry<sup>856</sup> and the preservation of his verses in the works of later writers implies that they, too were a powerful way in which the status of his laws was cemented in Athens' popular consciousness.<sup>857</sup> Solon's surviving poetry employs a style very reminiscent of Hesiod with its calls for restraint and the religious belief that all forms of injustice contribute to ensuing social ills.<sup>858</sup> In fr.36.18-20, while he seems to have been conscious of his impact as a legislator, he describes his hopes for his own legislation, drawing on the language and register of earlier didactic hexameter.<sup>859</sup>

θεσμοὺς δ' ὁμοίως τῷ κακῷ τε καὶ ἀγαθῷ  
εὐθειαν εἰς ἕκαστον ἀρμόσας δίκην  
ἔγραψα.

*But I wrote laws for noble and base alike,  
Setting out straight justice for each one.*

The use of the term *eutheian dikēn* is evocative of both the justice attributed to the gods in Hesiod and the individual decisions of the *basileis*<sup>860</sup> suggesting an awareness of the traditional roots behind the law and the values and structures that underpinned Greek normative culture both before laws were written and after. The creation and enduring appeal of verses like these in the traditions surrounding Solon and the arguments of philosophers and orators also demonstrate the value of poetry as a mode of normative communication and of

---

<sup>855</sup> Bowie (1986, pp.18-21) has even argued that this could have been the original context for Solon's elegiac verse. Goldhill (1999, pp.23-24) has also pointed out that many norms articulated in similar poetic forms pertain directly to the symposium and poetry seems to have been especially valuable in allowing one to assume a persona, show one's education and provide evidence to support an argument in the competitive debates that these social occasions afforded.

<sup>856</sup> Cf. Solon fr. 4, 11 & 36

<sup>857</sup> Plu. *Sol.* 3, Stadter, P. A. (1998, pp.42-43), Ober, J. (2005, pp.401)

<sup>858</sup> cf. Solon fr. 13 which with nods to both Homer (Il. 5-6 cf. *Od.*6.184-85) and Hesiod (Il.9ff. cf. *Op.* 240-66), Humphreys, S. C. (1988, pp.468-69)

<sup>859</sup> Anhalt, E. K. (1993, pp.5-6)

<sup>860</sup> cf. *Op.*36, *Th.*86

calling on earlier concepts of justice even when articulating the lawgiver's position as an agent of change.<sup>861</sup>

The preservation and propagation of Solon's poems show that, for later Athenians, the didactic poetic tradition remained a strong influence on their concept of 'justice', and was a key component in the transmission, interpretation and acceptance of their laws. The *Athenaiōn Politeia* cites a number of Solonian poetic fragments in support of its reconstruction of the social *stasis* between rich and poor and the motivation behind Solon's reorganisation of the constitution,<sup>862</sup> proclaiming that 'all are in agreement' (οἱ τ' ἄλλοι συμφωνοῦσι πάντες) on this version of events, and showing how such poetry could form an enduring part of the legacy of his reforms in the history of the *polis*. Likewise, when deploring Aeschines' conduct as an ambassador to Philip II of Macedon, Demosthenes incorporates one of Solon's longest surviving fragments<sup>863</sup> into his argument that the lawgiver was of the same opinion as him in his pride in the *polis* and respect for the law, demonstrating the value of such verses in articulating the spirit of the law as he argues that Aeschines was in violation of the will of Solon and the gods as much as he was in breach of the laws of the *polis*.

The stories that grew up around lawgivers were also not merely tales told for amusement, but an important part of the discourse of logographers, antiquarians and philosophers which helped to shape the normative cultures of the Greek *poleis*. Several lawgivers are said to have issued decrees protecting their laws in the longer term,<sup>864</sup> suggesting a sense that writing alone was not enough to make laws permanent,<sup>865</sup> and the

---

<sup>861</sup> Anhalt, E. K. (1993, pp.11-30), Plutarch even refers to a legend that Solon employed epic poetry to disseminate the laws themselves, and the Sicilian Lawgiver Charondas is supposed to have put his own laws into song form to teach them to the next generation. Athenaios *Deipnosophistai* 619b, Plu. *Sol.* 3-4 Thomas, R. (1996, pp.14-16; 2005, pp.44-45), Gagarin, M. (2008, pp.34-35)

<sup>862</sup> *Ath. Pol.* 5, 11-12

<sup>863</sup> Dem.19.254-56 cf. Solon fr.4

<sup>864</sup> At Athens Solon is supposed to have required that his laws be in force for ten years (Hdt. 1.29) or a hundred (Plu. *Sol.*25, *Ath. Pol.* 7.2) and that he himself must have found a way around Drakon's penalty of *atimia* for repealing his legislation. A more extreme case is the famous story of the Lokrian rule requiring anyone wishing to amend any of their laws do so with his head in a noose (Dem.24.139-43). Likewise, Plutarch, remarking on how deeply conservative Spartan law was, also records a story of Lycurgus forcing the citizens of Sparta to swear not to change his laws in his absence and starved himself to death so they could never be changed (Plu. *Lyc.*29). Cf. Appendix §4 ll.41-45

<sup>865</sup> Thomas, R. (2005, pp.59-60), Carey, C. (2004, pp.125-26), Gagarin, M. (1986, pp.76-77), MacDowell, D. M. (1978, pp. 50-51)

association of legal provisions with their creators' mythical status made it extremely rare for earlier laws to be called into question or seen as conflicting with the morality of the gods or with one another.<sup>866</sup> Tales also grew up surrounding the wisdom and fairness of their creators, further cementing their place and that of their laws in the *polis*' cultural consciousness. In particular the trope of the lawgiver who has to punish either himself or a relative demonstrates the absolute authority the laws held and their authors' willingness to submit themselves to their own creations is held as an example to all who follow. This can be seen in the stories of Lycurgus' own wife being the first to be fined for breaking his law forbidding women from travelling in chariots at festivals, Cleisthenes himself being ostracised having instituted the practice, Zaleucus having prescribed that adulterers should be blinded, gave one of his eyes so that his son should not be completely blind when he was found guilty of this offence,<sup>867</sup> and the suicide of Charondas for absent-mindedly breaking his own law forbidding weapons in the assembly.<sup>868</sup>

Such tales came to be an important part of the discourse of law and the way that written text was discussed and analysed to understand the rationales and morals that underpinned both the *polis*' legal systems and of these important ancestral figures. This can be seen in the existence of stories that appear to have grown up to account for the quirks of a given legal system. The absence of a specific law on patricide in Solon's laws is explained in later sources by a tradition that he was asked why he had not enacted such a law and he replied that he never imagined anybody would commit such a heinous crime.<sup>869</sup> Later writers also attempted to justify the ambiguities in his rules on inheritance by his desire to empower the people and the courts,<sup>870</sup> even after they were revised to limit the potential for *sykophantai* to exploit the potential grounds given in the original law that might invalidate wills.<sup>871</sup>

Many stories about the actions of lawgivers and the sayings attributed to them are probably apocryphal and grew up anachronistically as *poleis* embellished the legends of their

---

<sup>866</sup> Kapparis, K. (2019, pp.2-5), Harris, E. M. (2006b, pp.168-70), Humphreys, S. C. (1988, p.473)

<sup>867</sup> Ael. *VH* 13.24-25

<sup>868</sup> Diod. Sic.12.19 a similar tale is also attributed to Zaleucus in Eustathius *ad Il.* 1 p.62

<sup>869</sup> Diog. Laert. 1.59, Cic. *Rosc. Am.* 70, Orosius, V.16. xxiii-xxiv, Leão, D. F. & Rhodes, P. J. (2015, pp.14-15 fr.4a-c)

<sup>870</sup> *Ath. Pol.*9.2, 35.2, Plu. *Sol.*21.3-4 (Leão, D. F. & Rhodes, P. J. 2015, p.75)

<sup>871</sup> *Ath. Pol.* 35.2 (Leão, D. F. & Rhodes, P. J. 2015, pp.82-83) Wills were binding and valid 'unless made while under the influence of madness, old age, drugs or disease, or in obedience to a woman' cf. Dem.46.14, 48.56 *Ath. Pol.* 35.2, Plu. *Sol.*21.3-4, *Quaest. Rom.* 265e,

heroes or aligned their decisions with contemporary political beliefs, this too suggests a continuous, evolving tradition of understanding, propagating and reinterpreting their laws.<sup>872</sup> Common tropes between the legends of lawgivers, such as the civil strife (*stasis*) they were appointed to avert, tales of their travels, their meetings with other famous individuals, demonstrations of their wisdom and the measures they put in place to propagate and protect their laws suggest a mingling of traditions about them as their legends were passed down.<sup>873</sup> Even some ancient commentators appear to have doubted the authenticity of these stories, with Plutarch actually citing scepticism among his contemporaries as to the historicity of Solon's fabled meeting with Croesus<sup>874</sup> and Aristotle pointing out the anachronism in the legends that Zaleucus, Charondas and Thales heard one another speak.<sup>875</sup>

Lawgiver legends even appear to have crystallised around rulers who were believed to pre-date the appearance of written law as the creation of laws was attracted to a city's earliest heroes suggesting that the strong associations of written law and justice was being attached to the *polis*' mythical folk-heroes. Demosthenes<sup>876</sup> dates a law governing whom an elected *basileus* might take as a wife to the era of Theseus. Minos is already associated with justice in the *Odyssey*,<sup>877</sup> where he presides over the disputes brought to him by the spirits of the dead. However, by the fourth century the concept of written law was so strongly associated with justice in Athens,<sup>878</sup> and Crete had become so renowned for its compilations of legislation, that Minos is ranked among the fabled 'lawgivers' by both Aristotle and Plato.<sup>879</sup>

### *The Discourse and Interpretations of Written Laws*

The integration of written laws and the traditions that they spawned in Greek normative discourse can also be seen in the ways the laws themselves were interpreted and analysed by philosophers and logographers, casting them as part of the 'education' of citizens through their power to direct behaviour and define the *polis*' normative boundaries. The

---

<sup>872</sup> Gagarin, M. (1986, pp.51-80; 2008, pp.44-45), Hölkeskamp, K-J. (1992, pp.52-57), Sealey, R. (1994, pp.25-29), Thomas, R. (2005, pp.43-46), Papakonstantinou, Z. (2008, pp.62-69), Wohl, V. (2010, pp.23-24), Kapparis, K. (2019, p.34)

<sup>873</sup> Hölkeskamp, K-J. (1992, pp.52-57)

<sup>874</sup> Plu. *Sol.*27 Cf. Hdt.1.29-33

<sup>875</sup> Arist. *Pol.*1274a25-31

<sup>876</sup> Dem. 59.75-77

<sup>877</sup> Od.11.568-71, Gagarin, M. (1986, p.33)

<sup>878</sup> Harris, E. M. (2006b, p.157)

<sup>879</sup> Sealey R. (1994, p.25) Cf. Arist. *Pol.*1271b20-39 ff., Plato *Min.* 318c-d, 320a-c and *Laws* 624a-b,

verses, tales and aphorisms of lawgivers were often attributed to their supposed interest in educating the people,<sup>880</sup> and their role as sources of moral instruction was also part of the way that written laws themselves were understood to function and thus permeated into a *polis*' cultural consciousness. Plato's Protagoras sees the law as the final step in a citizen's moral education; alongside learning to read, write, sing, play music and make speeches, students studied the moral lessons of the works of Homer and Hesiod, before finally learning from the *polis*' laws.<sup>881</sup>

ἐπειδὴν δὲ ἐκ διδασκάλων ἀπαλλαγῶσιν, ἡ πόλις αὖ τούτους τε νόμους ἀναγκάζει μανθάνειν καὶ κατὰ τούτους ζῆν κατὰ παράδειγμα, ἵνα μὴ αὐτοὶ ἐφ' αὐτῶν εἰκῆ πράττωσιν, ἀλλ' ἀτεχνῶς ὥσπερ οἱ γραμματισταὶ τοῖς μήπω δεινοῖς γράφειν τῶν παίδων ὑπογράψαντες γραμμὰς τῇ γραφίδι οὕτω τὸ γραμματεῖον διδῶσιν καὶ ἀναγκάζουσι γράφειν κατὰ τὴν ὑφήγησιν τῶν γραμμῶν, ὥς δὲ καὶ ἡ πόλις νόμους ὑπογράψασα, ἀγαθῶν καὶ παλαιῶν νομοθετῶν εὐρήματα, κατὰ τούτους ἀναγκάζει καὶ ἄρχειν καὶ ἄρχεσθαι, ὅς δ' ἂν ἐκτὸς βαίνη τούτων, κολάζει:

*And whenever they are released from teachers, the polis again forces them to learn the laws and to live according to them, according to their example (paradeigma), lest they act in accordance with their instinct, but without experience, as teachers of letters write guidelines beneath the letters of those not yet skilled at writing, give them the writing book and make them write according to the guidelines, so the polis prescribed laws, the inventions of good and ancient lawgivers, and forces them to rule and be ruled in accordance with these, and punishes whoever steps beyond their bounds.*<sup>882</sup>

---

<sup>880</sup> Plato, *Prot.*326c-e, Arist. *Pol.* 1273a13-b7, *Plu. Lyc.*4, 13, 31 *Sol.*3, Stadter, P. A. (1998, p.6)

<sup>881</sup> Plato *Prot.* 325c-326e. Aeschin.1.8-18 uses the laws themselves to reach a similar conclusion, painting a picture of the way that the topics addressed in law show the interest the legislator had in regulating education (1.8-14) and how the prerequisites of being a good citizen were knowing the laws and right from wrong (1.18). Aristotle (*Pol.* 1266b30, 1267b5-9) also expresses the view that law takes its place alongside education to ensure that citizens understand why they are obeying the laws and restrain their appetites, so that those who would do wrong are in the minority. Cf. Plato *Laws* 854c, 870e Lanni, A. (2016, p.85).

<sup>882</sup> Plato *Prot.* 326c-d

The idea of the laws as a *paradeigma* suggests a sense that they are seen as manifestations of a wider understanding of *nomos* as part of Athens' normative culture which could be conceptualised, learned and analysed, and Protagoras' analogy of the process of learning to write implies that laws are the guidelines for achieving an understanding of a higher morality which is obtained by following their rules.

This concept of law as a form of instruction can also be seen in Aeschines' *Against Timarchus* where he argues for both the importance that 'the ancient lawgiver' (*ho palaios nomothetēs*) placed on education in the laws he set out regarding how children should be brought up,<sup>883</sup> but also how knowing the law was an integral part of a full citizen's moral compass.

ἐπειδὴν δ' ἐγγραφῆ τις εἰς τὸ ληξιαρχικὸν γραμματεῖον, καὶ τοὺς νόμους εἰδῆ τοὺς τῆς πόλεως, καὶ ἤδη δύνηται διαλογίζεσθαι τὰ καλὰ καὶ τὰ μὴ, οὐκέτι ἐτέρῳ διαλέγεται, ἀλλ' ἤδη αὐτῷ, ὦ Τίμαρχε.

*But, as soon as the young man has been registered in the list of citizens, and knows the laws of the state, and is now able to distinguish what is good and what is not, the lawgiver no longer addresses another, but now the man himself, Timarchus.*

Laws therefore were seen to direct behaviour not only by imposing limitations, but also by influencing the moral beliefs and actions of citizens.<sup>884</sup>

This understanding of the ways that laws could direct behaviour can also be seen in the ways that logographers describe the way they 'command' citizens to behave in particular ways. Aeschines describes how the laws commanded Timarchus 'not, on account of his shameful lifestyle, to speak in the assembly',<sup>885</sup> citing a number of explicit restrictions on those who prostitute themselves and the law's prescription that offenders will be subject to the 'most severe penalties' under a *graphē hetairēseōs*.<sup>886</sup> In Lysias 1 this can also be seen in the way that the logographer interprets a rule that allowed for the summary execution of an adulterer<sup>887</sup> as a 'command' to kill Eratosthenes. This suggests a recognition of the power of

---

<sup>883</sup> Aeschin.1.6-14

<sup>884</sup> This notion is idealised by Plato in *Laws*, Humphreys, S. C. (1988, pp.477-78), Lanni, A. (2006, pp.23-31; 2016, pp.4-5)

<sup>885</sup> Aeschin.1.3

<sup>886</sup> Aeschin.1.19-20

<sup>887</sup> Lys. 1.34-35 cf. Plu. *Sol.* 23.1

rules conferring rights or prescribing penalties to shape behaviour, not solely through explicit substantive ‘commands’ but also through the consequences they express.

Orators also often allude to the impact a jury’s verdict will have on the conduct of citizens,<sup>888</sup> suggesting that the application of the law was recognised as a crucial component in the shaping of behaviour. While this did not constitute a system of binding precedent,<sup>889</sup> it does suggest a belief that the outcomes of trials and the application of the law by juries could have profound impacts on the beliefs and actions of citizens. In *Lysias 30.23*, the speaker uses the normative language of consequences to present the jurors with a clear choice, which demonstrates a belief that the court’s interpretation and application of *nomos* was at least as important as the letter of the law:

προσέχουσι δὲ τὸν νοῦν οἱ βουλόμενοι τὰ κοινὰ κλέπτειν, ὅπως Νικόμαχος ἀγωνιεῖται: οἷς ὑμεῖς, ἐὰν μὴ τοῦτον τιμωρήσῃσθε, πολλὴν ἄδειαν ποιήσετε: ἐὰν δὲ καταψηφισάμενοι τῶν ἐσχάτων αὐτῶν τιμήσῃτε, τῇ αὐτῇ ψήφῳ τοὺς τε ἄλλους βελτίους ποιήσετε καὶ παρὰ τούτου δίκην εἰληφότες ἔσεσθε.

*Those who wish to steal that which is public devote their attention to how Nicomachus is judged. Whom, if you do not exact this retribution, you will greatly embolden, but if you punish him having condemned him to the very worst [penalty], by that verdict, you will make those others more virtuous and in addition will have exacted justice.*

Lysias appeals to the jury’s position of authority to send a message to those who hoped to repeat Nicomachus’ crimes and implies that it is through the application of the law that the punishment of such transgressions is kept in the public consciousness.

Aeschines evokes a similar sense of the jury’s civic duty in *Against Timarchus* as he situates the specific law prohibiting those who prostituted themselves from being politically

---

<sup>888</sup> Harris, E. M. (2010, pp.39-40), Lanni, A. (2004, pp.166-8; 2006a, pp.25-31) cf. also Dem.59.77, 107-14, 56.48-50, Lys. 12.90, 30.23

<sup>889</sup> Though Lanni (2004, pp.159-66) has identified 21 references to previous cases in Athenian forensic speeches, they are not in any way binding, but rather illustrate the ways in which they argue for the need for juries to show consistency, to recognise the differences in status between different actors, or as examples of verdicts either to be emulated or cautioned against. Dem. 21.72-6, 175-84; 24.138; 19.273; 20.146-8; 34.50; 59.116-17; Lys. 12.35-36, 42-3; 13.56-7; 6.17; 22.16; Aeschin. 1.86-8, 173; 2.6; 3.252-3, 258; Din. 1.13-14, 26; Antiphon 5.67, Isok. 18.22, Lyc.1.52

active in a cradle to grave summary of the laws of the *polis* near the start of his speech. However, here he uses the authorial presence of the *nomothetai* to construct an elaborate ‘morality’ for his audience out of the laws.<sup>890</sup>

σκέψασθε γάρ, ὧ ἄνδρες Ἀθηναῖοι, ὅσῃν πρόνοιαν περὶ σωφροσύνης ἐποιήσατο ὁ Σόλων ἐκεῖνος, ὁ παλαιὸς νομοθέτης, καὶ ὁ Δράκων καὶ οἱ κατὰ τοὺς χρόνους ἐκείνους νομοθέται. πρῶτον μὲν γὰρ περὶ τῆς σωφροσύνης τῶν παιδῶν τῶν ἡμετέρων ἐνομοθέτησαν, καὶ διαρρήδη ἀπέδειξαν, ἃ χρὴ τὸν παῖδα τὸν ἐλεύθερον ἐπιτηδεύειν, καὶ ὡς δεῖ αὐτὸν τραφῆναι, ἔπειτα δεύτερον περὶ τῶν μειρακίων, τρίτον δ’ ἐφεξῆς περὶ τῶν ἄλλων ἡλικιῶν, οὐ μόνον περὶ τῶν ἰδιωτῶν, ἀλλὰ καὶ περὶ τῶν ῥητόρων. καὶ τούτους τοὺς νόμους ἀναγράψαντες ὑμῖν παρακατέθεντο, καὶ ὑμᾶς αὐτῶν ἐπέστησαν φύλακας.

*For see, O men of Athens, how much concern for restraint did Solon himself show, that ancient lawgiver, and Drakon and those other lawgivers from that time. For first they passed laws about the decency of our children and they laid down clearly what course a free-born boy should follow, and how he must be reared, then secondly for young men and third for the other age-groups, not only in their private lives, but also concerning public-speakers. And having written these laws down, they entrusted them to you, and set you as their guardians.*

This shows how the authorial voice of the ‘lawgiver’ could help written legislation to resonate more widely in the cultures of Archaic *poleis*, with individual rules and inscriptions taken as evidence of a single, binding rationale that encompassed the city’s *nomoi*.<sup>891</sup> This also suggests a recognition that laws did not exist in isolation, but formed networks of rules that bounded behaviour and were both a reflection of and underpinned by a shared sense of fairness embodied in the concept of *nomos*.<sup>892</sup> While the cases attested in forensic speeches are never prosecuted for anything other than inscribed offences,<sup>893</sup> the fact that speakers were

---

<sup>890</sup> Aeschin.1.6-7, Ford (1999, pp.242-45)

<sup>891</sup> Wohl, V. (2010: 21-27), Lanni, A. (2006, pp.25-40), cf. Antiphon 5.14-87, 6.2-3, Lys. 1.31-33, Aeschin.1.6-7, Ford, A. (1999, p.242), Todd (1996, pp.120-21) notes the often anachronistic assumption that the constitutional effects of laws were the ‘lawgiver’s’ original intention cf. Lys. 26.9, Dem. 18.6, 24.212, 57.31, Hyp. 3.22

<sup>892</sup> Carey, C. (1996 p.36), Wohl (2010 pp.27-28), Lanni, A. (2006, pp.4-5)

<sup>893</sup> Kapparis, K. (2019, pp.35-36)



aiming to manipulate audiences by using the laws as a whole to show that their opponent had acted wrongly rather than solely as a clear-cut point of transgression,<sup>894</sup> and situating law among other sources of morality suggests that *nomos* was more than the sum of a city's written laws. The appearance of such discourse across judicial, political and private settings must have resonated beyond their immediate contexts and influenced the way that audiences thought and talked about law, embedding written laws and the stories told about them in the citizens' normative cultural consciousness.<sup>895</sup>

### Conclusions

Written law provided a powerful tool in state regulation of the behaviour of citizens and officials, enabling much greater procedural detail to be applied to general cases instead of requiring negotiation on the occasion of each dispute. Legal inscriptions used existing normative diction to describe specific provisions that were easily repeated, creating detailed procedures which could account for a variety of outcomes in multiple cases. Written law gave the community a singular voice enabling the creation of more clearly-defined penalties, channelling the courses of disputes and limiting the behaviours of those involved in them. The gradual accretion of legal inscriptions meant that increasingly complex rules and legal processes could develop, but this created its own issues of collection and organisation of rules and also had a significant impact on the ways they were disseminated. Gortyn and Athens in particular, which have furnished us with evidence of large quantities of written legislation, demonstrate efforts at collecting rules and organising them, suggesting a recognition that the law could become unwieldy and contradictory if allowed to grow unchecked. Gortyn's collections show signs of successive compilation texts that have been edited and which are aware of their place in the context of other rules. At Athens we have literary references to compilations of laws, but also a growing use of specific locations in the physical, social, religious and economic geography of the *polis* that reinforced the position of these norms in the city's culture and officials whose job involved assisting citizens with their navigation.

Alongside this type of activity we also find more traditional methods for instilling and enforcing correct behaviour. Gaps in legislation and the continued use of earlier legal terminology and compositional styles suggest that written laws continued to be rooted in and operated alongside oral normative discourses with which legal texts had a co-dependent

---

<sup>894</sup> Todd, S. C. (1990, p.32), Carey, C. (1994, pp.179-80), Ford, A. (1999, pp.241-42), Wohl, V. (2010, pp.23-24)

<sup>895</sup> Lanni, A. (2016, pp.156-70), Wohl, V. (2010, pp.31-33) cf. Arist. *Rhet.* 1.15.15

relationship. Established laws were rarely seen to contradict each other or the citizens' wider morality<sup>896</sup> and in an important sense the process of considering laws and traditional beliefs alongside one another led them to be adopted into the unwritten value-systems of Greek *poleis*, even when this meant using laws with archaic terminology or anachronistically imposing current political beliefs on earlier 'lawgivers'. This meant that written laws could permeate into unwritten morality, a process which the Greeks actively engaged in through their belief in the value of law as a form of education and the parallel normative traditions which grew up around legal texts.<sup>897</sup> This can be seen in the ways that orators and philosophers interpret laws alongside the poetry and maxims of ancient poets and semi-mythical sages, which suggest that the interplay between law and morality remained strong and that written and unwritten law continued to exert considerable influence over one another.

---

<sup>896</sup> Carey, C. (1994, pp.179-80)

<sup>897</sup> Lanni, A. (2016, pp.119-29)

## Conclusion

Despite the obvious challenges presented by studying ‘oral law’ in the Archaic and Classical periods, this thesis’ emphasis on the appearance and ‘shape’ of ‘oral law’ and recognition of the signs of it in our surviving sources has enabled us to examine more closely the kinds of norms, social structures and institutions that made up the normative cultures of Greek *poleis* both before and after the advent of written law. By combining detailed linguistic analysis, anthropological definitions and comparative study we have been able to piece together the normative phenomena of Archaic Greek *poleis*, and see the development of their legal culture as written law was adopted. Understanding the components of normative behaviours, institutions, concepts and syntax has enabled us to consider the features of ‘oral law’ in Greek communities before the arrival of written law, how that facilitated the composition of legal inscriptions, and how law as text came to interact with and define the wider physical, cultural and normative landscapes of the emerging *poleis*. The speech patterns and practices that have emerged from this study have also demonstrated the social and religious foundations of Greek normative culture and the capacity that Greeks had for creating, collecting and expressing rules before laws were written down and thus the types of norms that could have been expressed, discussed and used in the *agorai* and day to day activities of the earliest *poleis*.

As we have seen in Chapters 1 and 2, Greek *poleis* of the Archaic period were no strangers to conflict and disputes, and had already developed norms, language and institutions for mitigating and resolving them long before writing began to be used in the service of the *polis* and its rules. In Homer we find mechanisms for dealing with physical violence and homicide, sexual crimes like adultery, property disputes and allocation of inheritance. Our sources also attach great importance to forums enabling communities and senior figures to be involved in the resolution of disputes with norms enabling all parties to be heard, witnesses and evidence to be used and *poimai* to be negotiated. In wider society, we often find these issues reflected in the way they are talked about through statements of normative validity (‘it is *dikē/themis* that...’), and the consequences, promises or threats expressed as casuistic normative *gnōmai* (‘whoever does x, shall have y’ or ‘if you do x, you shall have y’). These values are often underpinned by beliefs in the natural order (*dikē*, *themis* or *kosmos*) of the gods and the expectations surrounding an individual’s status, family and the wider

community, but also are used to express rules for harmonious living, the avoidance of disputes and the conduct of resolutions. The use of oaths to construct new agreements also uses similar language and enables the same divine authority and public performance to be brought to complex agreements that can outline sophisticated procedures that accommodate different outcomes.

The similarity of the verbal structures for articulating such norms to those found in later laws suggests that this syntax formed the basis of the language of legal inscriptions and was a form of words that was well-suited to the needs and intentions of those creating early Greek legislation. Writing gave *poleis* a new kind of voice that was clearly defined and absolute, but did so in a manner and register that Greek speakers were already using to express, create and list rules for a variety of persuasive, advisory and contractual purposes. In Chapter 3 we saw the similarities of linguistic structure between both the written laws of Greek *poleis* and normative expressions in earlier poetry suggesting that the tools for formulating complex, multi-stage rules were well-established in the time of the Homeric epics and would have been recognisable in the formalised normative cultures of Greek communities of the 8<sup>th</sup> century. The sophistication and clarity of Greek normative style and syntax enabled ancient Greek lawmakers to create well-defined, readily-comprehensible and repeatable laws which drew authority from their distinctively normative tone and the divine and community powers that sanctioned them. Their continued use of similar authoritative diction to set out directives and consequences – with a generally understood vocabulary of offences and penalties, and verbal cues to assist in navigation – to that used in Homer and Hesiod, also suggests a compositional style that was influenced by earlier means of formulating ‘oral laws’ and was written with speakers and listeners as much in mind as those who could read it.

In Chapter 4 we saw that writing gave the community a consistent and coherent voice that would be very hard to challenge, and the casuistic diction adopted by Greek *poleis* lent itself to providing clear procedures and fixing the consequences of particular actions. While the continuity of language and of the types of resolutions available to Archaic and Classical *poleis* suggests that in many areas, written law was affirming systems and norms already in existence, and gaps suggest that other normative rules and practices continued to be important in the *poleis*’ administration of ‘legal’ activity, written legislation did bring about significant changes to the ways that law was used, interpreted and understood. Writing meant that *poinai* could be fixed, relative entitlements firmly established and the community could directly limit the actions of individuals both seeking and administering justice. The writing down of

law also meant that complex procedures could be built up over successive generations with additions and amendments increasing the comprehensiveness with which the law ruled on a particular issue. Greek *poleis* also seem to have been aware of the problems of recruiting individuals to create, collect and administer the law, of conflicting legislation or of the need to accommodate the rights of different social groups, but the ways in which they managed this could vary considerably from *polis* to *polis*, meaning that each *polis*' legislation would leave its mark on their normative and physical landscapes in distinctive ways, contributing to each community's sense of identity.

No *polis* could ever have fully abandoned oral normative culture in favour of written law, and oral traditions, which remained valuable in disseminating and ingraining information, rules and norms, appear to have remained important for regulating everyday action. Tales attributing aphorisms to lawgivers and the integration of sayings, poems and the laws themselves into legal discourse, suggest that these were all ways in which written laws could be discussed and underlines the co-dependent relationship between the written and 'oral' in the legal cultures of the Greek *poleis*. The continued reliance by written laws on vocabulary, official positions, institutions and procedures with pre-literate origins marked them as an integral part of the normative cultures of Greek *poleis*, never fully independent from the traditions and forms of words that they were rooted in and which subsequently grew up around them.

This thesis has approached the problems of what oral law looked like in Greece during the Archaic and Classical periods by considering the subtleties of normative language, its earlier applications, the cultures that may have influenced it and the wider social structures and mechanisms for inculcating and enforcing each community's rules. By approaching the problem from these different angles and considering written law as a part of the evolution of Greek normative culture, it has enabled us to add to our picture of the normative tools available to Greek *poleis*, the ways in which they were used and developed and the place of writing within it. Moreover, by identifying and cataloguing the diction of both written law and normative speech, we have been able to see the influences the latter had on the former and understand the social and cultural impact of writing laws down. However, there is much still to be discovered about the relative places of oral and written normative culture in Greece and the wider eastern Aegean that will further enrich our understanding.

We have seen how written law became an integral part of the normative cultures and identities of Greek *poleis* and some of the ways that traditional rules developed a symbiosis

with legal texts, however there is a lot of room for research on what was left unwritten and why, and how this affected the legal cultures of Greek city-states in the Classical period and beyond. While our evidence of inscriptions is both limited and uneven, the Cretan and Athenian evidence may provide useful case studies of why different approaches to written law were adopted and add to our evidence of their cultural impact. The scope of law, both in terms of what it addressed and how far it reached, will be really important in understanding these longer-term social and cultural effects on the emerging Greek *poleis*. The focus of this thesis on how laws were composed also leaves significant space for considering the roles of oral and written on the transmission of law, especially when considering a community's more remote inhabitants. In Chapter 4 we discussed the impression legal institutions and texts made on the physical geography of *poleis* and the minds of its citizens. Further research could therefore also be directed towards mapping the locations of inscriptions within a *polis* like Athens in order to comprehend the effects of writing on the various normative and ritual spaces that punctuated the landscapes of cities, and the ways this might have impressed the law on their citizens and affected their sense of identity. Mapping and comparative study could also be used to further our understanding of the ways that normative writing is used to regulate relationships between *metropoleis* and colonies or between city-states in a given *polis*-network. It would also advance our understanding of the historical consequences of treaties, decrees and multi-lateral legislation.

The Greek *poleis* did not exist in a vacuum and were in contact with a number of other cultures that must have affected their adoption of normative traditions and written law. The *Codex Hammurabi* with its casuistic laws and central place as a source for the origins of the legal cultures of the Near East<sup>898</sup> has drawn much comment among classical legal scholars,<sup>899</sup> but little effort has gone into explaining exactly how a text from a millennium earlier in a land far from the Aegean could have influenced the laws of Archaic Greece. Similarities of content in legal texts from throughout the Near East show the important cultural legacy of laws from the Bronze Age empires of Babylon, Assyria and the Hittites and such resonances may explain how they could come to interact with the Greek world over such vast tracts of space and time. However, in order to demonstrate this possibility and to show how such traditions, both written and oral, were shaped during this transmission process, we must consider the cultures on the shores of the Mediterranean with whom the

---

<sup>898</sup> Westbrook, R. (2003, pp.16-24), Blenkinsopp, J. (1992, pp.201-4)

<sup>899</sup> Gagarin, M. (2008, pp.146-75), West, M. L. (1997, pp.42-43, 125-34, 310-12), Sealey, R. (1994, pp.30-58)

Greeks had more direct contact. This thesis has suggested that one place we might look is in the laws of the Hebrew bible which demonstrate similar interactions between oral normative syntax and the language of law to those found in Greece and show similar levels of nuance and sophistication to texts like the Gortynian ‘Great Code’. Moreover, their closer geographical and temporal proximity, and direct contact with cultures like the Egyptians and Phoenicians that the Greeks are known to have encountered, make this a very fruitful area for further research.<sup>900</sup>

Greek law has sometimes been written off as a legal-historical dead end by comparison with Rome<sup>901</sup> but this perspective is simply untrue.<sup>902</sup> The Romans themselves acknowledged a tremendous debt to Solon’s legislation in the formulation of their own 12 Tables<sup>903</sup> and, just as other elements of Greek culture permeated into the Roman world, so we should examine the points of contact between Greek normative traditions and the evolution of Roman and subsequent legal systems.<sup>904</sup> By considering law as both a linguistic and cultural phenomenon, we can reasonably hope to identify the ways that the laws of Greek *poleis* could have influenced the Roman world and thus propagated much further than previously thought. Such studies may even help to identify and explain mechanisms by which legal cultures evolve in conjunction with neighbouring societies and how the technology of written law has spread from the Eastern Aegean to the rest of Europe and beyond.

It is also worth considering cultures with which the Greeks had no contact to understand whether they can shed light on how different features might develop independently in human groups and what it is that makes the evolution of law in the Eastern Aegean unique. In a lecture in Oxford in 2014, Mogens Hansen advocated a comparative approach to the study of oral law in Greece and the work of the Copenhagen *Polis* Centre has aimed to consider the evolution of networks of *polis*-type societies across the globe and at different times.<sup>905</sup> The practice of writing down laws seems to have evolved in a number of these, but the interaction between these nascent written legal traditions and the oral norms that came before and the reasons why some cultures adopt legal writing but others do not warrants further study by researchers considering Archaic Greece. It is hoped that this will

---

<sup>900</sup> Hagedorn, A. C. (2017, pp.117-19)

<sup>901</sup> Wohl, V. (2010, p.ix), Todd, S. C. (1993, pp.3-16)

<sup>902</sup> Kapparis, K. (2019, pp.9-14)

<sup>903</sup> Watson, A. (1995, p.1), Nguyen, N. L. (2006, pp.80-81)

<sup>904</sup> Westbrook, R. (2015, pp.72-75)

<sup>905</sup> Hansen, M. H. (2003, pp.259-62), Ober, J. (2015, pp.1-19), Murray, O. (2000, pp.231-33)

not only shed light on the development of written law in Greece itself, but that what has been learned by studying the emerging city-states of the Mediterranean can be applied to understanding how legal writing emerges from oral cultures and how written and unwritten coexist in modern legal systems.



## Bibliography

- Allan, W. (2006). Divine Justice and Cosmic Order in Early Greek Epic. *JHS*, 126, 1-35.
- Andersson, T. M. & Miller, W. I. (1989). *Law and literature in medieval Iceland : Ljósvetninga saga and Valla-Ljóts saga*. Stanford, Calif.: Stanford University Press.
- Anhalt, E. K. (1993). *Solon the singer : politics and poetics*. Lanham: Rowman & Littlefield.
- Arnautoglou, I. (1998). *Ancient Greek Laws: A Sourcebook*. London: Routledge.
- Bachvarova, M. R. (2007). Oath and Allusion in Alcaeus fr.129. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 179-88). Exeter: Bristol Phoenix Press.
- Bachvarova, M. R. (2016). *From Hittite to Homer: The Anatolian Background of Ancient Greek Epic*. Cambridge: Cambridge University Press.
- Bartor, A. (2007). The Representation of Speech in the Casuistic Laws of the Pentateuch. *Journal of Biblical Literature*, 126(2), 231-49.
- Bartor, A. (2012). Biblical Law as Narrative. *Prooftexts*, 32(3), 292-311.
- Ben-Dov, J. (2006). The Poor's Curse: Exodus XXII 20-26 and Curse Literature in the Ancient World. *Vetus Testamentum*, 56(4), 431-51.
- Blenkinsopp, J. (1992). *The Pentateuch: An introduction to the first five books of the bible*. New York: Doubleday.
- Bolmarcich, S. (2007). Oaths in Greek International Relations. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 26-38). Exeter: Bristol Phoenix Press.
- Bowie, E. L. (1986). Early Greek Elegy, Symposium and Public Festival. *JHS*, 13-35.
- Brown, A. S. (2011). *The Common Voice of the People: Heralds and the Importance of Proclamation in Archaic and Classical Greece with Special Respect to Athens*. Oxford: University of Oxford: Thesis submitted for the Degree of Doctor of Philosophy.
- Buck, C. D. (1955). *The Greek Dialects*. Bristol: Bristol Classical Press.
- Bungard, C. (2012). Reconsidering Zeus' Order: the Reconciliation of Apollo and Hermes. *The Classical World* 105 (4) 443-69
- Burkert, W. (1992). *The Orientalizing Revolution: Near Eastern Influence on Greek Culture in the Early Archaic Age*. (M. E. Pinder & W. Burkert, Trans.) Cambridge, Mass.: Harvard University Press.
- Callaway, C. (1993). Perjury and the Unsworn Oath. *Transactions of the American Philological Association*, 123, 15-25.
- Callaway, C. (1998). Odysseus' Three Unsworn Oaths. *The American Journal of Philology*, 119(2), 159-170.
- Canevaro, M. (2016). The Procedure of Demosthenes' 'Against Leptines': How to Repeal (and Replace) an Existing Law. *JHS*, 39-58.
- Carawan, E. M. (2007). Oath and Contract. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 73-80). Exeter: Bristol Phoenix Press.
- Carey, C. (1994). Legal Space in Classical Athens. *Greece & Rome*, 41(2), 172-86.
- Carey, C. (1996). Nomos in Attic Rhetoric and Oratory. *JHS*, vol.116 33-46.
- Carey, C. (2004). Offence and Procedure in Athenian Law. In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece*. London: Duckworth.
- Carey, C. (2013). In Search of Drakon. *The Cambridge Classical*, vol.59 Journal, 1-23.

- Carey, C. (2018). Bridging the Divide between Public and Private: dike exoules and other Hybrids. In C. Carey, I. Giannadaki, & B. Griffith-Williams, *Use and Abuse of Law in Athenian Courts*. Leiden: Brill.
- Cartledge, P. (1990). Fowl Play: a Curious Lawsuit in Classical Athens (Antiphon XVI, fr. 57-9 Thalheim). In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 41-61). Cambridge: Cambridge University Press.
- Clay, J. S. (1997). The Homeric Hymns. In I. Morris & B. Powell (Eds.), *A New Companion to Homer* (pp.489-507) Leiden: Brill
- Cohen, D. (1990). The Social Context of Adultery at Athens. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 147-65). Cambridge: Cambridge University Press.
- Collins, D. (2001). Theoris of Lemnos and the Criminalization of Magic in Fourth-Century Athens. *The Classical Quarterly*, 51(2), 477-93.
- Collins, D. (2008). *Magic in the Ancient Greek World*. Oxford: Blackwell.
- Colvin, S. (2007). *A Historical Greek Reader: Mycenaean to the Koiné*. Oxford: Oxford University Press.
- Conley, J. & O'Barr, W. (1998). *Just Words: Law, Language and Power*. Chicago: University of Chicago Press.
- Crielaard, J. P. (2009). Cities. In K. A. Raaflaub & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 347-72). Chichester: Wiley-Blackwell.
- Davies, J. K. (1996). Deconstructing Gortyn: When is a Code a Code? In L. Foxhall & A. D. E. Lewis (Eds.), *Greek Law in its Political Setting*. Oxford: Clarendon Press.
- de Polignac, F. (2009). Sanctuaries and Festivals. In K. A. Raaflaub & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 427-43). Chichester: Wiley Blackwell.
- Dickie, M. (2001). *Magic and Magicians in the Greek and Roman World*. London: Routledge.
- Donovan, J. M. (2008). *Legal Anthropology: An Introduction*. Plymouth: AltaMira Press.
- Dover, K. J. (1974). *Greek Popular Morality in the Time of Plato and Aristotle*. Oxford: Blackwell.
- Faraone, C. A. (1999). *Ancient Greek Love Magic*. Cambridge, Mass.: Harvard University Press.
- Filonik, J. (2013). Athenian Impiety Trials: A Reappraisal. *Dike*, 16, 11-96.
- Finley, M. I. (1978). *The World of Odysseus*. New York: The New York Review of Books.
- Fisher, N. (1990). The Law of Hubris in Athens. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 123-38). Cambridge: Cambridge University Press.
- Fletcher, J. (2008). A Trickster's Oaths in the "Homeric Hymn to Hermes". *The American Journal of Philology*, 129(1), 19-46.
- Ford, A. (1999). Reading Homer from the Rostrum: Poems and Laws in Aeschines' Against Timarchus. In S. Goldhill & R. Osborne (Eds.), *Performance Culture and Athenian Democracy* (pp. 231-56). Cambridge: Cambridge University Press.
- Fowler, R. L. (2011). Mythos and Logos. *The Journal of Hellenic Studies*, 131, 45-66.
- Foxhall, L. & Lewis, A. D. E. (1996). Introduction. In L. Foxhall & A. D. E. Lewis (Eds.), *Greek Law in its Political Setting* (pp. 1-8). Oxford: Clarendon Press.
- Frymer-Kenski, T. (2007). Israel. In R. Westbrook (Ed.), *A History of Near Eastern Law* (pp. 975-1046). Leiden: Brill.
- Gagarin, M. (1981). *Drakon and Early Athenian Homicide Law*. London: Yale University Press.
- Gagarin, M. (1982). The Organisation of the Gortyn Law Code. *GRBS*. vol.23, 129-46

- Gagarin, M. (1986). *Early Greek Law*. Berkeley: University of California Press.
- Gagarin, M. (2000). The Basileus in Athenian Homicide Law. In P. Flensted-Jensen, T. H. Neilsen & L. Rubinstein, *Polis & politics: studies in ancient Greek history* (pp. 569-79). Copenhagen: Museum Tusculanum Press.
- Gagarin, M. (2004). The Rule of Law in Gortyn. In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece*. London: Duckworth.
- Gagarin, M. (2005). Early Greek Law. In M. Gagarin & D. Cohen (Eds.), *The Cambridge Companion to Ancient Greek Law* (pp. 82-94). Cambridge: Cambridge University Press.
- Gagarin, M. (2007). Litigants' oaths in Athenian law. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 39-47). Exeter: Bristol Phoenix Press.
- Gagarin, M. (2008). *Writing Greek Law*. Cambridge: Cambridge University Press.
- Gagarin, M. & Perlman, P. J. (2016). *The Laws of Ancient Crete c.650-400 BCE*. Oxford: Oxford University Press.
- Gehrke, H-J. (2009). States. In K. A. Raaflaub, & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 395-410). Chichester: Wiley-Blackwell.
- Gitay, Y. (1980). Deutero-Isaiah: Oral or Written? *Journal of Biblical Literature*, 99(2), 185-197.
- Goldhill, S. (1999). Programme Notes. In Performance Culture and Athenian Democracy, S. Goldhill & R. Osborne (Eds.). Cambridge: Cambridge University Press.
- Goldman, H. (2009, Dec.). Traditional Forms of Wisdom and Politics in Plato's "Apology". *The Classical Quarterly*, 59(2), 444-67.
- Goody, J. & Watt, I. (1963, Apr.). The Consequences of Literacy. *Comparative Studies in Society and History*, 5(3), 304-45.
- Graham, A. J. (1992). Abdera and Teos. *Journal of Hellenic Studies*, 112, 44-73.
- Guthrie, W. K. C. (1977). *The Sophists*. Cambridge: Cambridge University Press.
- Haase, R. (2003). The Hittite Kingdom. In R. Westbrook (Ed.), *A History of Near Eastern Law* (pp. 619-56). Leiden: Brill.
- Hagedorn, A. C. (2017). Sacred Law, Lawgivers and Codification. Perspectives from the Hebrew Bible, Gortyn and Selinus. In C. Nihan, *Writing Laws in Antiquity. L'écriture du droit dans l'Antiquité* (pp. 117-40). Harrasowitz Verlag.
- Hall, M. D. (1996). Even Dogs have Erinyes: Sanctions in Athenian Practice and Thinking. In L. Foxhall, & A. D. E. Lewis, *Greek Law in its Political Setting* (pp. 73-89). Oxford: Clarendon Press.
- Halliwell, S. (2000). The Subjection of Muthos to Logos: Plato's Citations of the Poets. *The Classical Quarterly*, 50(1), 94-112.
- Hansen, M. H. (2003). 95 Theses about the Greek "Polis" in the Archaic and Classical Periods. A Report on the Results Obtained by the Copenhagen Polis Centre in the Period 1993-2003. *Historia: Zeitschrift für Alte Geschichte*, 52(3), 257-82.
- Hansen, M. H. & Nielsen, T. H. (2004). *An Inventory of Archaic and Classical Poleis*. Oxford: Oxford University Press.
- Harris, E. M. (2004). Antigone the Lawyer, or the Ambiguities of Nomos. In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece* (pp. 19-49). London: Duckworth.
- Harris, E. M. (2006). *Democracy and the Rule of Law in Classical Athens*. Cambridge: Cambridge University Press.

- Harris, E. M. (2006). The Rule of Law in Athenian Democracy: Reflections on the Judicial Oath. *Dike: Rivista di storia del diritto greco ed ellenistico*, vol.9 157-81.
- Harris, E. M. (2010). What are the Laws of Athens about? Substance and Procedure in Athenian Statutes. *Dike: Rivista di storia del diritto greco ed ellenistico*, vol.12/13 5-67.
- Hart, H. L. A. (1961). *The Concept of Law*. Oxford: Oxford University Press. (3<sup>rd</sup> ed. 2012)
- Harvey, D. (1990). The sykophant and sykophancy: vexatious redefinition? In P. Cartledge, P. Millett & S. C. Todd, *Nomos: Essays in Athenian Law, Politics and Society* (pp. 103-122). Cambridge: Cambridge University Press.
- Heath, M. (1985). Hesiod's Didactic Poetry. *The Classical Quarterly*, 35(2), 245-63.
- Hertzoff, A. (2008). Eros and Moderation in Plutarch's "Life of Solon". *The Review of Politics*, 70(3), 339-69.
- Hölkeskamp, K-J. (1992). Arbitrators, Lawgivers and the "Codification of Law" in Archaic Greece [Problems and Perspectives]. *Metis, Athropologie des mondes grecs anciens*, 7(1-2), 49-81.
- Hook, B. S. (2005, Jan.). Oedipus and Thyestes among the Philosophers: Incest and Cannibalism in Plato, Diogenes, and Zeno. *Classical Philology*, 100(1), 17-40.
- Hooker, J. T. (1980). *Linear B: An Introduction*. London: Bristol Classical Press.
- Humphreys, S. C. (1978). *Anthropology and the Greeks*. London: Routledge.
- Humphreys, S. C. (1985). Law as Discourse. *History and Anthropology*, vol.1 239-64.
- Humphreys, S. C. (1986). Kinship Patterns in the Athenian Courts. *GRBS*, 27(1), 57-91.
- Humphreys, S. C. (1988). The Discourse of Law in Archaic and Classical Greece. *Law and History Review*, 6(2), 465-93.
- Huxley, G. L. (1981). Stories Explaining the Origins of Greek Proverbs. *Proceedings of the Royal Irish Academy*, 81C, 331-43.
- Jeffery, L. H. (1956). The Courts of Justice in Archaic Chios. *The Annual of the British School at Athens*, 51, 157-67.
- Kaiser, O. (1975). *Introduction to the Old Testament*. Minneapolis, Minnesota: Augsburg Publishing House.
- Kapparis, K. (2019). *Athenian Law and Society*. London: Routledge.
- Kirk, G. S. (1989). The Homeric Hymns. In P. E. Easterling & B. M. W. Knox (Eds.) *The Cambridge History of Classical Literature: Volume 1 Part 1 Early Greek Poetry* (pp.69-75) Cambridge: Cambridge University Press
- Knudsen, R. A. (2014). *Homeric Speech and the Origins of Rhetoric*. Baltimore: Johns Hopkins University Press.
- Kristensen, K. R. (2008). Written Laws in Oral Context: 'Legal Literacy' in Ancient Crete. *Oral Presentation at the Classical Association Annual Conference*, (pp. 1-9). Liverpool.
- Lanni, A. (2004). Arguing from 'Precedent': Modern Perspectives on Athenian Practice. In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece* (pp. 159-168). London: Duckworth.
- Lanni, A. (2006). *Law and Justice in the Courts of Classical Athens*. Cambridge: Cambridge University Press.
- Lanni, A. (2016). *Law and Order in Ancient Athens*. Cambridge: Cambridge University Press.
- Lardinois, A. (1995). *Wisdom in context: The Use of Gnomic statements in Archaic Greek poetry*. Ann Arbor: UMI.
- Lardinois, A. (1997). Modern Paroemiology and the Use of Gnomai in Homer's Iliad. *Classical Philology*, 92(2), 213-34.

- Leão, D. F. & Rhodes, P. J. (2015). *The Laws of Solon: a new edition with introduction, translation and commentary*. London: I. B. Tauris.
- Lewis, J. D. (2006). *Solon the thinker: political thought in archaic Athens*. London: Duckworth.
- Llewellyn, K. & Hoebel, E. A. (1941). *The Cheyenne Way*. University of Oklahoma Press.
- Long, A. A. (2005). Law and Nature in Greek Thought. In M. Gagarin & D. Cohen (Eds.), *The Cambridge Companion to Ancient Greek Law* (pp. 412-30). Cambridge: Cambridge University Press.
- Luce, J. V. (1978). The Polis in Homer and Hesiod. *Proceedings of the Royal Irish Academy. Section C: Archaeology, Celtic Studies, Linguistics, Literature*, 78, 1-15.
- Lupack, S. (2011, April). Redistribution in Aegean Palatial Societies. A View from Outside the Palace: The Sanctuary and the Damos in Mycenaean Economy and Society. *American Journal of Archaeology*, 115(2), 207-217.
- MacDowell, D. M. (1978). *The Law in Classical Athens*. London: Thames and Hudson.
- MacDowell, D. M. (1986). *Spartan Law*. Edinburgh: Scottish Academic.
- Mackie, H. (1997). Song and Storytelling: An Odyssean Perspective. *Transactions of the American Philological Association*, 127, 77-95.
- Meiggs, R. & Lewis, D. (1969). *A Selection of Greek historical inscriptions to the end of the fifth century BC*. Oxford: Clarendon Press.
- Miller, S. G. (1995). Old Metroon and Old Bouleuterion. In M. H. Hansen & K. A. Raaflaub, *Studies in the ancient Greek polis* (pp. 133-56). Stuttgart: Franz Steiner Verlag.
- Millett, P. (1990). Sale, Credit and Exchange in Athenian Law and Society. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 167-94). Cambridge: Cambridge University Press.
- Mirhady, D. C. (2007). The Dikast's Oath and the Question of Fact. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 48-59). Exeter: Bristol Phoenix Press.
- Momigliano, A. (1978). The Social Structure of the Ancient City: Part I Freedom of Speech and Religious Tolerance in the ancient world. In S. C. Humphreys, *Anthropology and the Greeks* (pp. 179-92). London: Routledge.
- Morgan, C. (2009). The Early Iron Age. In K. A. Raaflaub & H. van Wees (Eds.), *A Companion to Archaic Greece* (pp. 43-63). Oxford: Wiley-Blackwell.
- Morris, I. (2006). The Collapse and Regeneration of Complex Society in Greece 1500-500 BC. In G. M. Schwartz & J. M. Nichols, *After Collapse: The Regeneration of Complex Societies* (pp. 72-84). Tucson: University of Arizona Press.
- Morris, I. (2009). The Eighth-Century Revolution. In K. A. Raaflaub & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 64-80). Chichester: Wiley-Blackwell.
- Murray, O. (1990). The Solonian Law of Hubris. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 139-45). Cambridge: Cambridge University Press.
- Murray, O. (2000). What is Greek about the Polis? In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & politics: studies in ancient Greek history* (pp. 231-44). Copenhagen: Museum Tusculanum Press.
- Nguyen, N. L. (2006). Roman Rape: An Overview of Roman Rape Laws from the Republican Period to Justinian's Reign. *Michigan Journal of Gender and Law*, 13(1), 75-112.

- Ober, J. (2000). Living Freely as a Slave of the Law: Notes on why Sokrates lives in Athens. In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & Politics: studies in ancient Greek history* (pp. 541-52). Copenhagen: Museum Tusculanum Press.
- Ober, J. (2005). Law and Political Theory. In M. Gagarin & D. Cohen (Eds.), *The Cambridge Companion to Ancient Greek Law* (pp. 394-411). Cambridge: Cambridge University Press.
- Ober, J. (2015). *The Rise and Fall of Classical Greece*. Princeton: Princeton University Press.
- Ogden, D. (2002). *Magic, Witchcraft and Ghosts in the Greek and Roman Worlds*. Oxford: Oxford University Press.
- Osborne, R. (1990). Vexatious Litigation in Classical Athens: sykophancy and the sykophant. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 83-102). Cambridge: Cambridge University Press.
- Osborne, R. (1996). *Greece in the Making*. London: Routledge.
- Osborne, R. (1999). Inscribing Performance. In S. Goldhill & R. Osborne (Eds.), *Performance Culture and Athenian Democracy*. Cambridge: Cambridge University Press.
- Osborne, R. (2006). Homer's Society. In R. Fowler (Ed.) *The Cambridge Companion to Homer*, (pp.206-19). Cambridge: Cambridge University Press,.
- Ostwald, M. (1986). *From Popular Sovereignty to the Sovereignty of Law*. Berkeley: University of California Press.
- Ostwald, M. (2000). Oligarchy and Oligarchs in Ancient Greece. In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & Politics: Studies in Ancient Greek History*. Copenhagen: Museum Tusculanum Press.
- Palmer, L. R. (1950). The Indo-European Origins of Greek Justice. *Transactions of the Philological Society*, 49(1), 149-168.
- Papakonstantinou, Z. (2002). Written Law, Literacy and Social Conflict in Archaic and Classical Crete. *Ancient History Bulletin*, 16(3-4), 135-50.
- Papakonstantinou, Z. (2007). Legal Procedure in the Homeric Hymn to Hermes. *Revue internationale des droits de l'antiquité*, 83-110.
- Papakonstantinou, Z. (2008). *Lawmaking and Adjudication in Archaic Greece*. London: Duckworth.
- Parker, R. (2004). What are Sacred Laws? In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece*. London: Duckworth.
- Parker, R. (2005). Law and Religion. In D. Cohen & M. Gagarin (Eds.), *The Cambridge Companion to Ancient Greek Law* (pp. 61-81). Cambridge: Cambridge University Press.
- Parker, R. (2005a). *Polytheism and Society at Athens*. Oxford: Oxford University Press.
- Patrick, D. (1973). Casuistic Law Governing Primary Rights and Duties. *The Journal of Biblical Literature*, 92(2), 180-184.
- Perlman, P. J. (2000). Gortyn. The First Seven Hundred Years (Part I). In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & politics: studies in ancient Greek history* (pp. 59-89). Copenhagen: Museum Tusculanum Press.
- Perlman, P. J. (2004). Writing on the Walls. The Architectural Context of Archaic Cretan Laws. (L. P. Day, Ed.) *Crete Beyond the Palaces: Proceedings of the Crete 2000 Conference*, pp. 81-97.
- Person, R. F. (1998). The Ancient Israelite Scribe as Performer. *Journal of Biblical Literature*, 117(4), 601-9.

- Philips, D. (2013). *The Law of Ancient Athens*. Ann Arbor, Michigan: University of Michigan Press.
- Posner, R. A. (1979, Oct.). The Homeric Version of the Minimal State. *Ethics*, 90(1), 27-46.
- Pospíšil, L. (1971). *Anthropology of Law: a comparative theory*. New York: Harper and Row.
- Priest, J. F. (1964, Jan.). "Opkia in the Iliad and Consideration of a Recent Theory. *Journal of Near Eastern Studies*, 23(1), 48-56.
- Raaflaub, K. A. (1997). Homeric Society. in Morris, I. & Powell, B. (Eds.), *A New Companion to Homer* (pp.624-48) Leiden: Brill
- Raaflaub, K. A. (2000). Poets, Lawgivers and the Beginnings of Political Reflection. In C. S. Rowe (Ed.), *The Cambridge History of Greek and Roman Political Thought* (pp. 23-59). Cambridge: Cambridge University Press.
- Rabel, R. J. (1988, Winter). Chryses and the Opening of the Iliad. *The American Journal of Philology*, 109(4), 473-81.
- Rahe, P. A. (1984, Apr.). The Primacy of Politics in Classical Greece. *The American Historical Review*, 89(2), 265-93.
- Rhodes, P. J. (2000). Who ran Democratic Athens? In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & politics: studies in ancient Greek history* (pp. 465-78). Copenhagen: Museum Tusulanum Press.
- Richardson, M. B. (2000). The Location of Inscribed Laws in Fourth Century Athens: IG II2 244, on Rebuilding the Walls of the Peiraeus (337/6 BC). In P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein (Eds.), *Polis & politics: studies in ancient Greek history* (pp. 601-15). Copenhagen: Museum Tusulanum Press.
- Rigsby, K. J. (2009). Notes on Sacred Laws. *Zeitschrift für Papyrologie und Epigraphik*, 170, 73-80.
- Robb, K. (1991). The Witness in Heraclitus and in Early Greek Law. *Hegeler Institute*, 74(4), 638-76.
- Roberts, S. (1979). *Order and Dispute: An Introduction to Legal Anthropology*. Harmondsworth: Penguin Books.
- Robertson, N. (1986). Solon's Axones and Kyrbeis, and the Sixth-Century Background. *Historia: Zeitschrift für Alte Geschichte*, 35(2), 147-76.
- Roebuck, D. (2001). *Ancient Greek Arbitration*. Oxford: Holo Books: The Arbitration Press.
- Rosen, R. M. (1997) Homer and Hesiod. in I. Morris & B. Powell (Eds.), *A New Companion to Homer* (pp.461-88) Leiden: Brill
- Roth, C. P. (1976). The Kings and Muses in Hesiod's Theogony. *Transactions of the American Philological Association*, 106, 331-38.
- Rubinstein, L. (2007). Response to James P. Sickinger. *Papers on Greek and Hellenistic Legal History* (pp. 113-24). Durham: Symposion.
- Sealey, R. (1994). *The Justice of the Greeks*. Michigan: Ann Arbor: University of Michigan Press.
- Shear, T. L. (1995). Bouleuterion, Metroon and the Archives at Athens. In M. H. Hansen & K. Raaflaub (Eds.), *Studies in the ancient Greek polis* (pp. 157-90). Stuttgart: Franz Steiner Verlag.
- Shelmerdine, C. W. (2008). Background, Sources and Methods. In C. W. Shelmerdine (Ed.), *The Cambridge Companion to the Aegean Bronze Age* (pp. 1-18). Cambridge: Cambridge University Press.

- Shelmerdine, C. W. & Bennet, J. (2008). Mycenaean States: Economy and Administration. In C. W. Shelmerdine (Ed.), *The Cambridge Companion to the Aegean Bronze Age* (pp. 289-308). Cambridge: Cambridge University Press.
- Sickinger, J. P. (1999). *Public records and archives in classical Athens*. London: University of North Carolina Press.
- Sickinger, J. P. (2004). The Laws of Athens, Publication, Preservation, Consultation. In E. M. Harris & L. Rubinstein (Eds.), *Law and the Courts in Ancient Greece*. London: Duckworth.
- Sickinger, J. P. (2007). Indeterminacy in Greek Law: Statutory Gaps and Conflicts. *Papers on Greek and Hellenistic Legal History* (pp. 99-112). Durham: Symposion.
- Sommerstein, A. H. (2007). Introduction. In A. H. Sommerstein & J. Fletcher (Eds.), *Horkos: The Oath in Greek Society* (pp. 1-8). Exeter: Bristol Phoenix Press.
- Stadter, P. A. (1998). Introductions and Notes. In R. Waterfield, *Plutarch Greek Lives: A New Translation*. Oxford: Oxford University Press.
- Stoddard, K. B. (2003). The Programmatic Message of the "Kings and Singers" Passage: Hesiod, "Theogony" 80-103. *Transactions of the American Philological Association*, 133(1), 1-16.
- Stroud, R. S. (1968). *Drakon's Law on Homicide*. Berkeley: University of California Press.
- Thür, G. (1996). Oaths and Dispute Settlement in Ancient Greek Law. In L. Foxhall & A. D. E. Lewis (Eds.), *Greek Law and its Political Setting* (pp. 57-72). Oxford: Oxford University Press.
- Thomas, C. G. (2009). The Mediterranean World in the Early Iron Age. In K. A. Raflaub & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 22-40). Chichester: Wiley-Blackwell.
- Thomas, R. (1989). *Oral Tradition and Written Record in Classical Athens*. Cambridge: Cambridge University Press.
- Thomas, R. (1992). *Literacy and Orality in Ancient Greece*. Cambridge: Cambridge University Press.
- Thomas, R. (1996). Written in Stone? Liberty, Equality, Orality and the Codification of Laws. In L. Foxhall & A. D. E. Lewis (Eds.), *Greek Law in its Political Setting*. Oxford: Clarendon Press.
- Thomas, R. (2005). Writing Law and Written Law. In M. Gagarin & D. Cohen (Eds.), *The Cambridge Companion to Ancient Greek Law* (pp. 41-60). Cambridge: Cambridge University Press.
- Todd, S. C. (1990). The Purpose of Evidence in Athenian Courts. In P. Cartledge, P. Millett & S. C. Todd (Eds.), *Nomos: Essays in Athenian Law, Politics and Society* (pp. 19-39). Cambridge: Cambridge University Press.
- Todd, S. C. (1993). *The Shape of Athenian Law*. Oxford: Clarendon Press.
- Todd, S. C. (1996). Lysias: Against Nikomachos: The Fate of the Expert in Athenian Law. In L. Foxhall & A. D. E. Lewis (Eds.), *Greek Law in its Political Setting* (pp. 101-31). Oxford: Clarendon Press.
- Ulf, C. (2009). The World of Homer and Hesiod. In H. Van Wees & K. Raflaub (Eds.), *A Companion to Archaic Greece* (pp. 81-99). Chichester: Wiley-Blackwell.
- van Effenterre, H. (1937). Recherches à Dréros. *Bulletin de correspondance hellénique*, 61(1), 5-32.
- van Effenterre, H. (1946). Inscriptions archaïques crétoises. *Bulletin de correspondance hellénique*, 70(1), 588-606.



- van Effenterre, H. & Ruzé, F. (1994). *Nomima: Recueil d'inscriptions politiques et juridiques de l'archaïsme grec* (Vol. 1). Rome: École Française de Rome Palais Farnèse.
- Van Wees, H. (2009). The Economy. In H. Van Wees & K. Raaflaub (Eds.), *A Companion to Archaic Greece* (pp. 444-67). Chichester: Wiley-Blackwell.
- Walker, J. (1996). Before the Beginnings of "Poetry" and "Rhetoric": Hesiod on Eloquence. *Rhetorica: A Journal of the History of Rhetoric*, 14(3), 243-264.
- Walzer, M. (1994). Legal Codes of Ancient Israel. *Nomos*, 36, 101-19.
- Watson, A. (1995). *The Spirit of Roman Law*. Athens, GA: University of Georgia Press.
- Weinfeld, M. (1973, Apr.-Jun.). Covenant Terminology in the Ancient Near East and Its Influence on the West. *Journal of the American Oriental Society*, 93(2), 190-99.
- West, M. L. (1978). *Hesiod Works and Days*. Oxford: Clarendon Press.
- West, M. L. (1997). *The East Face of Helicon: West Asiatic Elements in Greek Poetry and Myth*. Oxford: Clarendon Press.
- Westbrook, R. (2003). *A History of Near Eastern Law*. Leiden: Brill.
- Westbrook, R. (2015). *Ex Oriente Lex: Near Eastern Influences on Greek and Roman Law*. (D. Lyons & K. A. Raaflaub, Eds.) Baltimore: Johns Hopkins Press.
- Willetts, R. F. (1967). *The Law Code of Gortyn*. Berlin: Walter De Gruyter & Co.
- Willi, A. (2007). *The Languages of Aristophanes: Aspects of Linguistic Variation in Classical Attic Greek*. Oxford: Oxford University Press.
- Wilson, J-P. (2009). Literacy. In K. A. Raaflaub & H. Van Wees (Eds.), *A Companion to Archaic Greece* (pp. 562-63). Chichester: Wiley-Blackwell.
- Wohl, V. (2010). *Law's Cosmos: Juridical Discourse in Athenian Forensic Oratory*. Cambridge: Cambridge University Press.

## Appendix 1

Identification of concepts with *themis* and *dikē* in Homer and Hesiod

<i>He themis esti</i>	<i>Ou themis esti</i>	<i>He/haute dikē esti</i>	<i>Ou dikē esti</i>
<p><b>Nobles in assembly</b>  <i>Il.2.73</i> Agamemnon decides that it is right to test the Achaeans  <i>Il.9.33</i> It is right for Diomedes to challenge Agamemnon in assembly.  <i>Il.23.581</i> – it is right for Menelaus to issue an oath challenge. (<i>dikaso</i> 579)  <i>Il.24.652</i> – it is right for the Achaeans to consult Achilles.</p>	<p><b>Forbidden by religion</b>  <i>Il.14.386</i> fear prevents men from approaching the sword of Poseidon  <i>Il.16.796</i> Achilles' helmet not allowed to be defiled by dust until Apollo knocks it from Patroclus' head.  <i>Il.23.44</i> Achilles refuses to wash.  <i>Od.10.73</i> – it is not right for Aeolus to help Odysseus  <i>SH.447</i> wrong for Ares to take Heracles' armour</p>	<p><b>Custom – expected behaviour</b>  <i>Od.4.691</i> – custom of kings to act justly in all things  <i>SH.85</i> – certain treatment correct for <i>suppliants</i></p> <p><b>Laws of Nature</b>  <i>Od.11.218</i> – natural for humans to become insubstantial ghosts after death.  <i>Od.24.255</i> – right for old men to sleep</p> <p><b>Fate/lot</b>  <i>Od.14.59</i> – natural for slaves to accept anyone who visits  <i>Od.19.43</i> – the indignity Odysseus suffers is the <i>dikē</i> of the gods.  <i>Od.19.168</i> – normal for men who are far from home to suffer  <i>HH 3.459</i> – the lot of sailors/pirates.</p>	<p><i>Od.18.275-80</i>  – not the custom of the suitors to follow the traditions of those who came before.</p>
<p><b>Nobles in personal relations</b>  <i>Od.3.187</i> it is right for Nestor to tell Telemachus what he has heard  <i>Od.11.451</i> – it is right that Odysseus embrace his son</p>	<p><b>Forbidden in general – probably religion?</b>  <i>Od.14.56</i> not right for Eumaeus to refuse hospitality</p>		
<p><b>For <i>xenoi</i></b>  <i>Il.11.779</i> – it is right to show hospitality to <i>xenoi</i>, cf. <i>Od.9.268</i> – it is right to give gifts to <i>xenoi</i> &amp; <i>Od.24.286</i> – it is right to repay hospitality.  <i>Od.16.91</i> – it is right for Odysseus (in disguise) to respond to Telemachus' tale of woe.</p>			
<p><b>For the gods</b>  <i>Od.3.45</i> - it is right to pray and pour libations  <i>Op.137</i> - it is right for men to sacrifice to the gods  <i>Th.396</i> – it is right for Zeus to honour the gods neglected by Kronos  <i>HH 3.542</i> it is right for committers of <i>hybris</i> to be overthrown</p>			
<p><b>For women</b>  <i>Il.9.134=276</i> and <i>19.177</i> It is right for men and women to procreate  <i>Od.14.130</i> it is customary for a woman to weep on hearing news of her long lost husband.</p>			

## Appendix 2

### Identification of acts as *kata kosmon* in Homer and Hesiod

<i>eu kata kosmon</i>	<i>ou kata kosmon</i>
<p><b>In accordance with custom</b>  <i>Il.</i>24.621-24 Achilles' followers sacrifice a lamb correctly and share its flesh out.</p>	<p><b>Contrary to accepted norms</b>  <i>Il.</i>2.214 – It is Thersites' habit to quarrel with princes out of turn.  <i>Od.</i> 3.137-38 – The sons of Atreus call all the Achaeans to an assembly which is ill-conceived  <i>Od.</i>8.178-9 Euryalus insults Odysseus</p>
<p><b>Orderly</b>  <i>Il.</i>11.48, 12.85 Horses well-controlled  <i>Il.</i>10.472 Armour and weapons well-arrayed</p>	<p><b>Shameful</b>  <i>Il.</i>8.12 Zeus threatens to have those who disobey his orders whipped and banished from Olympus  <i>Od.</i>20.178-82 Melanthius tells Odysseus that his begging is shameful  <i>HH</i> 4.255 Apollo threatens Hermes for not revealing the location of his cattle</p>
	<p><b>Contrary to Fate</b>  <i>Il.</i>5.759 – Hera complains that Zeus allowing Ares to run amuck is wrong.  <i>Il.</i>17.205 – Zeus laments that the taking of Patroclus' armour has sealed Hector's fate.</p>
<p><b>Accurate/beautiful</b>  <i>Od.</i>8.489 Odysseus asks Demodocus to sing the deeds of the Achaeans as they happened.  <i>HH</i> 4.433 Hermes' song is good  <i>HH</i> 4.478-79 Hermes bids Apollo take the lyre and sing to it</p>	<p><b>Inaccurate</b>  <i>Od.</i>14.363 Eumaeus suspects that Odysseus has lied to him</p>

## Appendix 3

1. **Dreros 1 (7<sup>th</sup> Century)** – *Nomima* I.81, *ML* 2, *GP* Dr1 (Perlman, 2004, pp. 192-95), (Gagarin, 2008, pp.45-50), Gagarin, M. & Perlman, P. J. (2016, pp.200-207)

θιός ὄλοιον. | ἄδ'ἔφαδε | πόλι· | ἐπεὶ κα κοσμήσει, | δέκα φετίον τὸν ἀ-  
φτὸν | μὴ κόσμεν· | αἱ δὲ κοσμησίε, | ὁ[π]ε δικακσίε, | ἀφτὸν ὀπῆλεν | διπλεῖ κάφτὸν  
ἄκρηστον | ἦμεν, | ἄς δόοι, | κῶτι κοσμησίε | μηδὲν ἦμην  
ὀμόται δὲ | κόσμος | κοὶ δάμοι | κοὶ | ἴκατι | οἱ τᾶς πόλ[ιο]ς

*God be kind (?). The city has determined as follows: whenever a man has been kosmos, for ten years, the same man may not be kosmos; and if he does become kosmos whatever judgements he passes, he shall owe twice that, and he shall be stripped of office, as long as he lives, and what he passes as kosmos shall be void. And the swearers shall be the kosmos and the people and the twenty, those that are of the city.*

2. **Drakon's Homicide Law – Athens (6<sup>th</sup> century, reinscribed 409 BCE)** – *IG* I<sup>3</sup> 104 (Stroud, R. S. 1968)

καὶ ἐὰμ με' κ {ἐκ} [π]ρονοί[α]ς [κ]τ[ένει τίς τινα, φεύγ]ε[ν· δ]ι-  
κάζεν δὲ τὸς βασιλέας αἴτιο[ν] φόν[ο] Ε . . . . . 17 . . . . . Ε [β]ολ-  
εύσαντα· τὸς δὲ ἐφέτας διαγν[ο]ν[α]ι. [αἰδέσασθαι δ' ἐὰμ μὲν πατὲρ ἑ-  
ὶ ἔ ἀδελφὸς] ἔ ἠυῆς, ἡάπαντ[α]ς, ἔ τὸν κο[λύοντα κρατὲν· ἐὰν δὲ μὲ] ἠοῦ-  
τοι οσι, μέγρ' ἀνεφ[σι]ότετος καὶ [ἀνεφσις, ἐὰν ἡάπαντες αἰδέσ]ασ-  
θαι ἐθέλοσι, τὸν κο[λύ]οντα [κ]ρα[τὲν· ἐὰν δὲ τούτον μεδὲ ἡες εἰ, κτ]έ-  
νει δὲ ἄκο[ν], γνοσι δὲ ἠοι [πε]ντ[έκοντα καὶ ἡες ἠοι ἐφέται ἄκοντ]α  
κτέναι, ἐσέσθ[ο]ν δὲ ἠ [οι φ]ρ[άτορες ἐὰν ἐθέλοσι δέκα· τούτος δ]ὲ ἠο-  
ὶ πεντέκο[ν]τ[α καὶ] ἡες ἀρ[ι]στ[ίνδεν ἠαιρέσθον.

*Even if someone kills another not from premeditation, let him be an exile. The basileis shall judge him guilty of murder, either [the murderer?] or the man who plotted it. And the Ephetai shall pass judgement. And if his father is alive, or brothers or sons, they may grant reconciliation/forgiveness, unanimously, or one who objects shall prevail. And if there are none of these, [the right shall extend] as far as the degree of cousin, and the cousins may grant reconciliation if they all wish, but one who objects shall prevail. And if none of these exists and he killed unwillingly, and fifty-one of the Ephetai deem it unwilling homicide, let ten members of the phratry admit him if they wish to. And the fifty-one are to select them [sc. the phratry members] on the basis of good character.*

3. **Lokris (6<sup>th</sup> Century)** – IG IX 1<sup>2</sup> 3:609, ML 13, (Arnaoutoglou, I. 1998, pp. 110-11), (Colvin, S. C. 2007, pp. 163-66)

τεθμός ὄδε περὶ τᾶς γᾶς βέβαιος ἔστο κὰτ τὸν  
ἀνδαιθμὸν πλακὸς Ὑλίας καὶ Λισκαρίας καὶ τῶν ἀ-  
ποτόμον καὶ τῶν δαμοσίων. ἐπινομία δ' ἔστο γο-  
νεῦσιν καὶ παιδί, αἱ δὲ μὲ παῖς εἶε, κόραι, αἱ δὲ μὲ κόρα εἶε,  
ἀδελφεοῖ, αἱ δὲ μὲ ἀδελφεὸς εἶε, ἀνχιστέδαν ἐπινεμέσθο κὰτ τὸ 5  
δίκαιον, αἱ δὲ μὲ τοὶ ἐπινομοὶ Οἱ [[ON]] ἡότι δέ κα φυτεύσεται,  
ἄσυλος ἔστο, αἱ μὲ πολέμοι ἀνανκαζομένοις δόξζαι ἀ-  
νδράσιν ἡενὶ κέκατὸν ἀριστίνδαν τοῖ πλέθει ἄνδρας δια-  
κατίος μεῖστον ἀξζιομάχος ἐπιφοίκος ἐφάγεσθαι. ἡόστ-  
ις δὲ δαιθμὸν ἐνφέροι ἔ ψᾶφον διαφέροι ἐν πρείγαι, ἐν πόλι, ἐ- 10  
ν ἀποκλεσῖαι ἔ στάσιν ποιέοι περὶ γαδαισίας, αὐτὸς μὲ-  
ν φερρέτο καὶ γενεὰ ἄματα πάντα, χρέματα δὲ δαμευόσθον  
καὶ φοικία κατασκαπτέσθο κὰτ τὸν ἀνδρεφονικὸν τετμ-  
όν. ὄδε τεθμός ἱαρός ἔστο τῷ Ἀπόλλωνος τῷ Πυθίῳ καὶ τῶν συνν-  
[άον· ἔμεν τοῖ τα]ῦτα παρβαίνοντι ἐξζόλειαν αὐτοῖ καὶ γενεᾶ καὶ πά- 15  
ντεσιν, τοῖ δ' εὐσεβέοντι ἡίλαος ἔσστο. ἂ δὲ γ[ᾶ τὸ μὲν ἔμισον]  
κομίζοιεν, ἀξιοδότας ἔστο τὰν αὐτῷ ὅτινι χρεῖζοι.  
vacat  
τὸν ὑπαπροσθιδίον ἔστο, τὸ δ' ἔμισον τῶν ἐπιφοίκων ἔσ-  
<τ>ο. Vacat 20  
vacat  
τὸς δὲ κοίλος μόρος διαδόντο : ἀλλαγὰ δὲ βέβαιο-  
ς ἔστο, ἀλαζέσθο δὲ ἀντὶ τῷ ἀρχῷ.

*This law shall be in force concerning the division of the land of Hylia and Liskaria, both allocated and public, and the line of inheritance shall be both to parents and to a son, and if there is no son, to a daughter, and if there is no daughter, to a brother and if there is no brother let the nearest relative assume the rights according to the law, and if the legal heirs do not (?) [...] and whatever shall grow (on it), let it not be seized unless, under constant strain of war, one hundred and one men from the best families decide by majority to settle at least two hundred men fit for war as colonists. And whoever should bring the division of land or propose a vote in the council of elders, in the city or the assembly, or makes a quarrel about land division, let him be cursed<sup>906</sup> and his whole family for ever, and his money become public and his house be demolished in accordance with the law on homicide. And this law shall be sacred to Pythian Apollo and those worshipped alongside him. And if anyone transgresses them, let them be cursed, himself and all his relatives, and if anyone respects them, let them be blessed.*

*The land shall belong, half to the previous settlers and half to the new colonists.*

*And the valley land shall be divided; exchange [of allotted land] shall be valid, but let the exchange take place before the magistrate.*

<sup>906</sup> φερρέτο could be translated as ‘cursed’ (Arnaoutoglou, 1998, p. 110), ‘exiled’ (Colvin, 2007, p. 164) or ‘harmed’ all of which could be valid punishments in this context.

4. Halikarnassos (5<sup>th</sup> Century) – *Nomima* I.19, ML 32, (Arnaoutoglou, I. 1998, p. 109)

τάδε ὁ σύλλο[γ]ος ἐβoλεύσατο  
ὁ Ἀλικαρνατέ[ω]ν καὶ Σαλαμακι-  
τέων καὶ Λύγδαμις ἐν τῇ ἱερῇ[ι]  
ἀγορῇ, μῆνος Ἑρμαιῶνος πέμ-  
5 πτη ἱσταμένο, ἐπὶ Λέοντος πρυ-  
ταν[εύον]τος τῷ Ὀατατίος κα-  
[ι] Σαρυτῷ ἄλλο τῷ Θεκυίλω νε-  
[ωπ]οί[ο, πρ]ὸς μνήμονας· μὴ παρ[α]-  
δίδο[σθαι] μῆτε γῆν μῆτε οἰκ[ί]-  
10 [α] τοῖς μνήμοσιν ἐπὶ Ἀπολλω-  
νίδεω τῷ Λυγδάμιος μνημονε-  
ύοντος καὶ Παναμύω τῷ Κασβώ-  
λλιος καὶ Σαλαμικτέων μνη-  
μονεύοντων Μεγαβάτεω τῷ Ἀ-  
15 φυάσιος καὶ Φορμίωνος τῷ Π[α]-  
νυάτιος. ἦν δὲ τις θέλησι δικάζε-  
σθαι περὶ γῆς ἢ οἰκίων, ἐπικαλ[έ]-  
τω ἐν ὀκτωκαίδεκα μηνσὶν ἀπ' ὅτ[ε]  
20 ὁ ἄδος ἐγένετο· νόμοι δὲ κατάπ[ε]-  
ρ νῦν ὀρκῶ {ι}σ<α>ι τὸς δικαστάς· ὅ τ[ι]  
ἂν οἱ μνήμονες εἰδέωσιν, τοῦτο  
καρτερόν ἐστί. ἦν δὲ τις ὕστερον  
ἐπικαλήσῃ τούτο τῷ χρόνῳ τῶν  
25 ὀκτωκαίδεκα μηνῶν, ὄρκον ἔνειαι τ-  
ῶι νεμομένῳ τὴν γῆν ἢ τὰ οἰκ-  
[ί]α, ὄρκον δὲ τὸς δικαστάς ἡμι-  
[ε]κτον δεξαμένος· τὸν δὲ ὄρκον εἴ-  
[ν]αι παρεόντος τῷ ἐνεστηκότος. κ-  
αρτερός δ' εἶναι γῆς καὶ οἰκίων οἵτινες  
30 τὸτ' εἶχον ὅτε Ἀπολλωνίδης καὶ Πανα-  
μύης ἐμνημόνευον, εἰ μὴ ὕστερο-  
ν ἀπεπέρασαν. τὸν νόμον τοῦτον  
ἦν δὲ τις θέλησι συγγέαι ἢ προθήτα-  
[ι] ψῆφον ὥστε μὴ εἶναι τὸν νόμο-  
35 ν τοῦτον, τὰ ἔοντα αὐτῷ πεπρήσθω  
καὶ τῷ πόλλωνος εἶναι ἱερὰ καὶ α-  
ὐτὸν φεύγεν αἰεὶ· ἦν δὲ μὴ ἦι αὐτ-  
ῶι ἄξια δέκα στατήρων, αὐτὸν [π]  
επρῆσθαι ἐπ' ἐξαγωγῇ καὶ μη[δ]-  
40 ἀμὰ κάθοδον εἶναι ἐς Ἀλικαρν-  
ησσον. Ἀλικαρνασσέων δὲ τῶς σ-  
υμπάντων τούτῳ ἐλεύθερον εἶ[ν]-  
ναι, ὅς ἂν ταῦτα μὴ παραβαίνοι κατό-  
περ τὰ ὄρκια ἔταμον καὶ ὡς γέγραπ-  
45 αι ἐν τῷ Ἀπολλωνίῳ, ἐπικαλῶεν.

*These things did the sullogos (assembly) decree, that of the Halikarnassians and of the Salamakissians, and Lygdamis in the sacred agora on the fifth day of the month of Hermaion erected them at the time when Leon son of Oassassis was prytanis (elder) and Sarytollos of Thekuilas was neopoios (a political office) before (or perhaps 'regarding') the mnemones, that neither land nor house is to be entrusted to the mnemones in the year of the mnemoneship of Apollonides, son of Lygdamis and Panamyas son of Kasbollis and when these holding the office of mnemon for the Salamakissians, Megabates son of Aphyasis and Phormio son of Panyassis. And if anyone wishes to contest in court about land or houses, let him make a summons within eighteen months from when this decree was passed. And according to the law, may the judges swear. Whatever the mnemones know, that is to have authority. And if someone summons [the court] later than this period of eighteen months, an oath will be required from the owner of the land and the house and that the judges receive a hemiekton, and that the oath be sworn with the plaintiff present. And the rights of the land shall be with whoever had them when Apollonides and Panamyas were mnemones, if they did not lose them subsequently. And if anyone wishes to abolish this law or hold a vote so that this law should not exist, let his property be sold and be consecrated to Apollo and let him be an exile forever. And if his property is not worth ten staters, let him be sold as a slave abroad with no way of returning to Halikarnassos. And all of the Halikarnassians, anyone who does not transgress these things that have been sworn, and as they have been written in the temple of Apollo, shall be free to summon [the court], those who respect this, as was sworn on the sacrifices and written in the temple of Apollo.*

5. Gortyn (5<sup>th</sup> Century) – IC IV 72, (Willets, R. F. 1967)

Law on Unlawful Seizure - Col. I.1- II.2

I.1 θιοί.  
 ὅς κ' ἐλευθέροι ἔῃ δόλοι μέλλεῖ ἀν-  
 πιμοῦν, πρὸ δίκας μὲ ἄγεν. αἱ δ-  
 ἔ κ' ἄγεῖ, καταδικασάτο τὸ ἐλευθέρ-  
 5 οῦ δέκα στατεῖρας, τὸ δόλοῦ πέντ-  
 ε ὅτι ἄγει καὶ δικασάτο λαγάσαι  
 ἐν ταῖς τρισὶ ἀμέραις. αἱ [δέ] κα  
 μὲ [λαγ]άσει, καταδικαδδέτο τὸ μὲν  
 ἐλευθέροῦ στατεῖρα, τὸ δόλοῦ [δα]ρκν-  
 10 ἂν τᾶς ἀμέρας φεκάστας, πρὶν κα λα-  
 γάσει· τὸ δὲ κρόνοῦ τὸν δι[κ]αστ-  
 ἂν ὀμνύντα κρίνεν. [vac.] αἱ δ' ἀννίοιτο  
 μὲ ἄγεν, τὸν δικαστὴν ὀμνύντ-  
 α κρ[ί]νεν αἱ μὲ ἀποποῖνιοι μαίτυς.  
 15 αἱ δὲ κα μοῦλει ὁ μὲν ἐλεύθερον  
 ὁ δ[ὲ] δ[ο]λοῦν, κάρτονας ἔμειν  
 [ἄ]λλοτεροῖ κ' ἐλεύθερον ἀποποῖνιοῦν-  
 τι. αἱ δὲ κ' ἀντὶ δόλοῦ μοῦλοῦντι  
 ποῖνιοῦντες φὸν φεκάτερος ἔμ-  
 20 εῖν, αἱ μὲν κα μαίτυς ἀποποῖνεῖ, κ-  
 ατὰ τὸν μαίτυρα δικαδδεν, αἱ  
 δὲ κ' ἔῃ ἀνποτέροις ἀποποῖνιοῦντι  
 ἔμειν δατέροῖ, τὸν δικαστὴν ὀ-  
 μνύντα κρίνεν. ἔδὲ κα νικαθεῖ ὁ  
 25 ἔκοῦν, τὸ μὲν ἐλεύθερον λαγ-  
 ἄσαι τᾶν πέ[v]τ' ἀμερᾶν, τὸν δὲ δό-  
 λο[v] ἐς κῆρας ἀποδόμειν. αἱ δὲ  
 κα μὲ λαγάσει ἔμειν ἀποδοῖ, δικακ-  
 σάτο νικῆν τὸ μὲν ἐλευθέροῦ  
 30 πεντέκοντα στατεῖρας καὶ σ-  
 τατεῖρα τᾶς ἀμέρας φεκάστ-  
 ας, πρὶν κα λαγάσει, τὸ δὲ δόλοῦ  
 δέκα στατεῖρας καὶ δαρκνὰν  
 τᾶς ἀμέρας φεκάστας, πρὶν κ' ἀ-  
 35 ποδοῖ ἐς κῆρας. ἔδὲ κα καταδι-  
 κάσει ὁ δικαστὴς, ἐνιαυτοῖ π-  
 ράδδεθθαι τὰ τρίτρα ἔμειν,  
 πλῖον δὲ μὲ· τὸ δὲ κρόνοῦ τὸν δι-  
 καστὴν ὀμνύντα κρίνεν. αἱ δὲ  
 40 κα ναεῦεῖ ὁ δολος ὅ κα νικαθεῖ-  
 ι, καλίοῦν ἀντὶ μαιτύροῦν δυσὸν δ-  
 ρομέοῦν ἐλευθέροῦ ἀποδεικσάτο  
 ὅ ἐπὶ τοῖ ναοῖ ὅπερ κα ναεῦεῖ ἔα-  
 ὑτὸς ἔῃ ἄλλος πρὸ τούτο· αἱ δὲ  
 45 κα μὲ καλεῖ ἔμειν δείκει, κατισ-  
 [τάτ]ο τὰ ἐγ[ρα]μένα. αἱ δὲ κα μεδ' ἄ-  
 αὐτὸν ἀποδοῖ ἐν τοῖ ἐνιαυτοῖ,

Gods!

Whosoever may be likely to bring a  
 suit in relation to a free man or a  
 slave is not to seize him before  
 trial. But if he make a seizure, let  
 [the judge] condemn him to [a fine  
 of] ten staters for a free man, five  
 for a slave of whoever he seizes  
 and let him judge that he release  
 him within three days; but if he  
 does not release him, let [the  
 judge] condemn him to [a fine of]  
 a stater for a free man and a  
 drachma for a slave for each day  
 until he does release him, and the  
 judge must judge on oath as to the  
 time. [vac.] But if he should claim  
 that he did not do it, let the judge  
 decide on oath unless a witness  
 should testify. And if one party  
 should contend that he is free, and  
 the other that he is a slave, let  
 whoever claims he is free prevail.  
 And if they contend about a slave,  
 each claiming that he is his, if a  
 witness should testify, let the judge  
 decide in accordance with the  
 witness, but if he testify for both  
 sides or neither, let him decide on  
 oath. And if the one holding him is  
 defeated, let him release him within  
 five days or hand over the slave.  
 But if he should not release or  
 hand him over, let it be decided  
 that [the successful plaintiff] be  
 awarded, in the case of a free man  
 to fifty staters, and a stater for  
 each day until he release him, and  
 in the case of a slave ten staters  
 and a drachma for each day until  
 he hand him over. And if, from the  
 time the judge gave the verdict, a  
 year [has elapsed], triple penalties  
 or less are to be enacted, but no  
 more. As to the time, let the judge  
 decide under oath. And if the slave  
 takes sanctuary from whoever has  
 been defeated, calling [the

50 τάνς ἀπλόονς τ[ι]μάνς ἐπικατ-  
 αστασεῖ. vac. αἰ δέ κ' ἀποθάνε̄ι μ-  
 ο̄λιομένας τᾶδ δί[κ]ας, τὰν ἀπλ-  
 όον τιμάν κατ<α>στασεῖ. vac. αἰ δ-  
 έ κα κοσ[μ]ιο̄ν ἄγε̄ι ε̄̄ κοσμίοντο-  
 ς ἄλλος, ε̄ κ' ἀποστᾶι, μο̄λέν, καῖ κ-  
 55 α νικαθεῖ, κατιστάμεν ἀπ[ὸ ἅ]ς  
 [ἀμέρα]ς ἄγαγε τὰ ἐγραμένα. vac.  
 II.1 [τ]ὸν δὲ νενικαμένον κα[ὶ τὸν κα]-  
 τακείμενον ἄγοντι ἅπατον  
 ε̄̄με̄ν.

*successful party] before two free  
 adult witnesses, to point him out at  
 the temple wherever he takes  
 refuge or some other on his behalf.  
 And if he does not summon or point  
 him out, let him pay what is  
 written. And if he should not give  
 him back within the year, he shall  
 hand over in addition the single  
 penalties.*

Vacat

*And if [the defeated party] die  
 while the case is being contested,  
 he shall pay the single penalty.*

Vacat

*And if one who is kosmos make a  
 seizure or another [seize the slave  
 of] one who is kosmos, once he has  
 stepped down, let them contend  
 and, if he is defeated, let him pay  
 what is written from the day he did  
 it.*

Vacat

*But may one who seizes a  
 condemned man be immune from  
 all punishment.*



6. Gortyn (5<sup>th</sup> Century) – IC IV 72, (Willets, 1967)  
Law on Adoption – Col. X.33- XI.23

X.33 ἄνπανσιν ἔμεν ὅπο κά τιλλ-  
ει. ἀμπαίνεθαι δὲ κατ' ἀγορὰν  
35 καταφελεμένον τομ πολιατᾶ-  
ν ἀπὸ τῶ λάο ο ἀπαγορεύοντι.  
vac. ὁ δ' ἀμπανάμενος δότο τᾶ-  
ι ἑταιρείαι τᾶι ρᾶι αὐτο ἱαρε-  
ιον καὶ πρόκοον ροῖνο. vac. καὶ  
40 μὲν κ' ἀνέλεται πάντα τὰ κρέ-  
ματα καὶ με̄ συννεῖ γνέ̄σια τ-  
έκνα, τέλλεμ μὲν τὰ θῖνα καὶ  
τὰ ἀντρο̄πινα τὰ τῶ ἀνπαναμέ-  
νο̄ κἀναλεῖθαι ἄπερ τοῖς γ-  
45 νε̄σίοις ἔγρατται. αἰ [δ]έ κα με̄-  
λεῖ τέλλεν ἄι ἔγρατται, τὰ κ[ρ]έ-  
ματα τὸνς ἐπιβάλλοντανς ἔκε-  
ν. αἰ δέ κ' εἴ γνέ̄σ[ι]α τέκνα τοῖ ἀν-  
παναμένο̄ι, πεδὰ μὲν τῶν ἔρσ-  
50 ἐνο̄ν τὸν ἀμπαντόν, ἄπερ αἰ θ-  
έ̄λ[ε]ιαὶ ἀπὸ τῶν ἀδελπιῶν λανκά-  
νοντι· αἰ δέ κ' ἔρσενες με̄ ἰο̄ν-  
τι, θέ̄λειαι δέ, ρισφόμοιρον ἔ-  
XI.1 [με̄ν] τὸν ἀμπαντόν καὶ με̄ ἑ-  
πάνανκον ἔ̄ με̄ν τέλλεν τ[ᾶ τ]-  
[σ̄ ἀν]παναμένο̄ καὶ τὰ κρέ̄μα-  
τ' ἀναλε̄θαι ἄτι κα κατα[λίπε̄]-  
5 [ι ὁ ἀ]μπανάμενος· πλίυι δὲ τὸν  
ἀμπαντόμ με̄ ἐπικο̄ρέν. vac. [αἰ δ']  
[ἀπο]θάνοι ὁ ἀμπαντός γνέ̄σια  
τέκνα με̄ καταλιπό̄ν, πᾶρ τὸ[νς τ]-  
[σ̄ ἀν]παναμένο̄ ἐπιβάλλονταν-  
ς ἀνκο̄ρέν τὰ κρέ̄ματα. αἰ δ[έ κα]  
10 [λεῖ] ὁ ἀμπανάμενος, ἀποφει-  
άθθο̄ κατ' ἀγορὰν ἀπὸ τῶ λά[ο̄ ὃ̄]  
[ἀπα]γορεύοντι καταφελεμέν-  
ο̄ν τῶν πολιατᾶν· ἀνθέμε̄[ν δὲ]  
15 [δέκ]α [σ]τατεῖρανς ἐδ δικαστ-  
έ̄ριον, ὁ δὲ μνάμο̄ν ὁ τῶ κσε̄ν-  
ίο̄ ἀποδότο̄ τοῖ ἀπορρε̄θέντι.  
γυνὰ δὲ με̄ ἀμπαίνεθθο̄ με̄δ'  
ἄνε̄βος. vac. κρέ̄θαι δὲ τοῖδδε ἄ-  
20 ι τάδε τὰ γράμματ' ἔγραψε,  
τῶν δὲ πρόθθα ὅπαι τις ἔκει ἔ̄ ἀ-  
μπαντύι ἔ̄ πᾶρ ἀμπαντῶ με̄ ἔτ' ἔ̄-  
νδικον ἔ̄ με̄ν. vac.

*Adoption is to be from whatever one chooses. And the adoption declaration is to be taken in the agora before the assembled citizens, from the stone (las) for speaking in assembly.*

Vacat

*And let he who makes the adoption give to his hetaireia a sacred offering and a measure of wine.*

Vacat

*And if he [the one adopted] receives all the property and there are no other begotten children, he must fulfil all of the obligations of the adopter to gods and men and receive what is set out for biological children. But if he should not wish to accomplish what is set out, the next of kin should have the property. And if the adopter has biological offspring, the adopted son shall have in relation to the males what females have from their brothers. And if there are no males, but females, the adopted son is to have an equal share and is not obliged to pay the obligations of the adopter and receive whatever property he leaves behind. And no more is to pass to the adopted son.*

Vacat

*And if the adopted son dies leaving no biological children, the property should revert to the heirs of the adopter. And if the adopter wishes, let him rescind the adoption before the agora when the citizens are gathered from the stone for speaking in assembly. And let him place 10 stateres in the court which the mnemon will give to the one renounced. And let not a woman make adoption nor a minor.*

Vacat

*And these writings shall stand from the time of their inscription, and concerning earlier matters, whatever one has, whether as an adopted son or adopter, let there be no liability.*

## 7. Eltynia 5<sup>th</sup> century GP Elt.2 Laws on bodily harm

[-]ι[.]ο| αἰ δέ κα| κηρί| τροόσει| ἀποτ[ει]σεῖ| πέντε| δαρκν[άς]·|αἰ δέ κή<ς> ρίνος| αἷμα ρυήι [-]  
 [-] τοῖς Ἐλτυνιοῦσι·|αἶ κ' ἄρκσει μάκας|ἀποτεισεῖ|δέκα δαρκνὰς| ὅπε κ' ἄρκσει[-]  
 [-] ἀμερᾶν| ἄι κ' ἀνεείπη| ὕστερον δέ μή·|κόσμον δέ πράδεν| τὰν ἐς πόλιν| τιμάν·| ὅποτερος [-]  
 [-τ]ον Φερημενον| Φον Φειπον·|αἰ δέ κ' ἀλεκσόμενος| [πα]ίη| ἄνατον ἦμεν| τοῖ ἀλεκσο[μένοι-]  
 [-τιμ]άν (?)|κατιστάμεν| τὸν τροοσ[άν]τον·| [αἰ] δέ κ' ἀ[ν]ήρ| τὸν πηῖσκον| παίη| μὴ [-]  
 [-]τον| ἦν ἀνδρηῖοι| ἦν ἀγ[έ]λα[ι]| ἦ(ν) συν[β]ολήτραι| ἦ 'πι κοροῖ| ἦ 'πι [...]ο[...]| η[-]  
 [-] αἰ δέ κ' ἀγέ[λ]α[ος]| τὸν πηῖσκον| ὄνη[ται] (?)| ἄ ἦγγραται| αἰ ἐς καιρὸν η[-]  
 [-τὸνς]| κόσμος| γ[ι]γνώσκεν| ὄμνυντας| τὸν ἐπὶ πόλεος| τὸν τ' ἀ[-]  
 [-τρο]ό[σε]ι (?)| ἀποτεισεῖ| πέντε δαρκνὰς| ὅ[πε ν]ίν κα παίσει·| α[ἰ] κα ἰ[-]  
 [-]ι ἦ| παίσει| ἀποτει[σ]εῖ| [πέ]ντε δαρκνὰς| ὀθά[κι]ς| [κα π]αίσει[ι]| η[-]  
 [-]ς| πέντε δαρκνὰς| [...]7-8...|ι δέ| ὀ παθὸν| πανσα[-]

- *But if he should wound with his hand he shall be fined five drachmas; and if blood should flow from his nose –*
- *to the Eltynians. If he should initiate a fight he shall be fined ten drachmas whenever he should start –*
- *within ?] days from when he announces it and no later; and the kosmos is to exact the fine on behalf of the city. Whichever-*
- *(?). But if he should strike in self-defence, the one defending himself shall not be liable –*
- *The person wounding shall pay the fine; and if a man should strike a pēiskos, let (him?) not-*
- *or in the andreion, or in the agela or in the synbolētra, or at the dance, or at –*
- *and if an agelaos (?) the pēiskos what is written, if it is appropriate –*
- *the kosmos is to decide under oath, the one on behalf of the polis, the other –*
- *he should wound (?) he shall be fined five drachmas whenever he might strike him. And if–*
- *or he should strike, he shall be fined five drachmas however often he strikes him –*
- *five drachmas [...7-8...] but the victim all (?) -*

## 8. Datala 5<sup>th</sup> century GP Da1, Nomima I.22, Colvin, S. C. (2007, pp.156-58) Contract between the polis and the scribe Spensithios

θιοί. ἔφαδε Δαταλεῦσι καὶ ἐσπένσαμες πόλις Σπενσιθίωι ἀπὸ πυλᾶν πέντε ἀπ' ἐκάστας θροπᾶν τε καὶ ἀτέλειαν πάντων αὐτῶι τε καὶ γενιᾶι ὥσκα πόλι τὰ δαμόσια τά τε θιῖα καὶ τάνθρώπινα ποινικάζεν τε καὶ μναμονεῦρην. ποινικάζεν δὲ πόλι καὶ μναμονεῦρην τὰ δαμόσια μήτε τὰ θιῖα μήτε τάνθρώπινα μηδέν' ἄλλον αἰ μὴ Σπενσίθιον αὐτόν τε καὶ γενιὰν τ' ὄνυ, αἰ μὴ ἐπαίροι τε καὶ κέλοιτο ἢ αὐτὸς Σπενσίθεος ἢ γενιὰ τ' ὄνυ, ὅσοι δρομῆς εἶεν τῶν υἱῶν οἱ πλίεις; μισθὸν δὲ δόμεν τ' ὀ ἐνιαυτ' ὀ τῶι ποινικαστᾶι πεντήροντά τε πρόροος κλεύκιος...

Gods. The Dataleis decided and we the city, five men from each of the *Phylai* pledged to Spensithios sustenance and freedom from all taxation, for him and his descendants, on condition that he write and record for the city in public matters, both sacred and secular. And no one else shall write for the city and record public matters, neither sacred nor secular unless Spensithios himself or his descendants, that is the majority of his sons that are adults, should initiate and support this. And as payment [the city] shall give each year to the scribe fifty measures of new wine and...

9. Teos 5<sup>th</sup> century *ML* 30 – Side A, *Nomima* I.104, Colvin, S. C. (2007, pp.112-15)  
**Curses against those who would harm the *polis***

ὅστις φάρμακα δηλητή-  
ρια ποιοῖ ἐπὶ Τηίοισι-  
ν τὸ ξυνὸν ἢ ἐπ' ἰδιώτη, κ-  
ῆνον ἀπόλλυσθαι καὶ α-  
ὐτὸν καὶ γένος τὸ κένο  
ὅστις ἐς γῆν τὴν Τηίην κ-  
ωλύοι σῖτον ἐσάγεσθαι  
ἢ τέχνηι ἢ μηχανῆι ἢ κατ-  
ὰ θάλασσαν ἢ κατ' ἥπειρο-  
ν ἢ ἐσαχθέντα ἀνωθεοίη,  
ἀπόλλυσθαι καὶ αὐτ-  
ὸν καὶ γένος τὸ κένο.

Whoever manufactures destructive substances for use against the Teans, as a whole or against an individual, let him be destroyed, both himself and his descendants.

Whoever impedes the bringing of grain into the land of Teos, by skill or plot, by sea or by land, or sends away that which has been imported, let him be destroyed, both himself and his descendants.

