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UNDERSTANDING THE ROOTS

Thanos Zartaloudis, *The Birth of Nomos,* Edinburgh University Press, Edinburgh 2019, 485.

This book, written by Thanos Zartaloudis, provides an extensive overview of the complex and intriguing process of the emergence of the idea of *nomos*, or a family of words to which *nómos* and *nomós* belong. Dr Thanos Zartaloudis (Athens, born 1975) is an eminent professor of legal history and theory at the University of Kent, where he has studied Common Law and European Legal studies. His doctorate in philosophy at the University of London was on Martin Heidegger and Giorgio Agamben; his research, however, spans various fields of interest: the intersection of philosophy and legal thought, legal theory and history, ancient cultures and social institutions, migration and socio-political theory, geography, spatial theory etc. Zartaloudis is a visiting lecturer at many famous universities and accepted world-wide as an expert in the aforementioned fields. He also coordinates the Research Group on Political Theologies and Juridification, and holds the title of co-director of the cross-faculty Kent's Interdisciplinary Centre for Spatial Studies.

In the Preface of the book, the author points out that his focus is almost completely on the archaic age (900–480 BC), which is pre-juridical and characterized by intense ritualization, sacredness of the oath and indiscernibility between religion/magic and law. He outlines his two theses: firstly, *nómos* and *nomós*, in their numerous uses, are prevalent in Greek poetry and thought from at least Hesiod onwards; secondly,

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sources tell us that *nómos* and *nomós* mean many things other than 'law', and for the most part they do not mean 'law' at all – as they definitely do in the Classical era.

The book is divided into two main sections, the first of which is dedicated to the Homeric world, and the second to the post-Homeric.

In the five chapters of the first part, the author discusses different aspects of the *nomos.* The earliest mention of the *nomos,* found in Homer's works, is connected to feasts and sacrifices, i.e. the ritual distribution – sharing of meat, bread or wine, which at the same time points towards the etymology of the term. The root *nem* is the basis for the Greek verb *nemō* which means 'to allot', 'to assign' and 'to distribute'. Also, in the Homeric world, a feast had a ritualistic connotation and usually involved rigid patterns, as did sacrifices, which should not be completely identified with our understanding of a 'sacred act', since it was sometimes reduced only to the act of slaughter, without any divine context. The author offers many well-researched discussions which underline that sacrifices and feasts could be understood as articulations of social worth and community, i.e. the act of distribution was at least a powerful display of status. Some scholars have thus suggested that *nómos* originates from the 'fundamental' and symbolic practice of food distribution in a tribal *ēthos.*

In Homer we can find a similar term – *moira*, which is closely related to *nemein.* In the *Odyssey* the act of distribution of meat is sometimes preceded by terms that mean division, which led some authors to suggest *nomos* is primarily connected to 'distribution', while *moira* signifies 'division' – indicating different semantic lines, despite the similarity of such acts. The author sets out to evaluate whether the standpoints of some scholars – that the Homeric *moira* is not the same as the one encountered in Plato's *Republic*, nor could be seen as 'fate', nor is she blind – are true and to what extent. It seems more probable that *moira* is closely related to the primitive custom of dividing common property (food and land) among members of the collective. Etymologically, the term is derived from the root *mer,* meaning 'part' or 'apportionment', and most of the time, as Zartaloudis states – it is associated either with birth, or with death (especially in the *Iliad*), although it cannot be identified with mortality. More precisely, *moira* could be conceived as a potential bond that is allotted to mortals by the gods, although it is utilized in more than one way. It is speculated whether *moira* binds the gods as well, while some examples regarding boundaries of the power of Zeus show that even he cannot fully control the death of mortals. *Moira* is not superior to the gods, but coexistent. In a way, it is by it that the gods are immortal and men mortal. Nevertheless, this does not impose the conclusion that *moira* can be equated with an overwhelming imperative, because there is a distinction

between necessity (the must) and normativity (the ought). Zartaloudis argues that in the epics, when someone strays beyond their bounds – they are actually going beyond their ethical limit, 'fair share' or their way of life, which means that the *moira* is dynamic and represents a threshold between necessity and normativity. Nothing seems impossible in Homer, there is only the ethical potentiality, leading the author to assume that the allotment of *moira* is maybe the distant predecessor of the ethical self of the classical period.

The third part of the Homeric scrutiny includes the question of the *nemō* – land term, which obviously has the same aforementioned root *nem* and is related to the sense of 'possession or use'. Zartaloudis points out that notions such as 'ownership' or 'private' must be used with substantial caution, especially with regard to the land. He then refers to the Mycenaean period, introducing an interesting clue that in these regions the land could be held by individuals, as well as the communities. Rights to the land were divided up among families, and members of the community paid tax to the state, which owned most of the land. Some authors suggest that the buying of land by wealthy non-community individuals could be understood as 'private' ownership, although the distinction between the 'private' and the 'common' should not be understood sharply. On the other hand, in the Homeric epics (or, historically, in the archaic age) land was mainly divided in two ways: into *klēros* and *temenos.* The former type was probably common land that most often served the purpose of subsistence, although in some passages it is also clear that it was apportioned as a sign of wealth. The latter is mentioned in Homer usually as a wide and fertile land, given as a gift to a significant person, but without giving rise to any obligations. It was offered to someone as a sign of high recognition and for services provided to the community. Eventually, the author presents the ongoing debate on whether *temenos* was drawn from royal (private) or common land and discusses the arguments that are used to support these two claims.

Following is the so-called 'pastoral *nomos*', for which we are given a meticulous insight into the pastoral practices of the archaic age. In the Homeric poems, a lot of significance is placed on to cattle farming, sheep and goat herding, while shepherds are depicted as surviving on the margins of the inhabited world – without a home. The general term of *nomeus* reflects perhaps some sort of orderly distribution, while *nomós* indicates something like a 'place of pasture'. The author then examines the words related to herding and pasture within the family of *nemein* (distribution/sharing), at the same time indicating that some scholars, such as Laroche, warn us that the primary use of *nomós* in Homer is 'pastoral', rather than affiliated with 'law'. More precisely, when this word is used in the poems as 'distribution', it indicates a wandering shepherd, since it only mentiones

an 'expanse of habitable land around the city'. i.e. it was not a juridical act. In the end, we are offered a conclusion that these pastoral meanings are important for the early uses of *nemō*.

Finally, the last section of the Homeric part focuses on *nemesis*, which appears to be a sort of 'indignation', usually as a reaction (anger) to exterior irritations, such as a breach of custom or norm. In that sense, it may be observed as a social manifestation, and not so much as a moral category. On the other hand, the author points to the relation with *nemein* through an example of Poseidon's enragement in the case of an infringement of a portion, stating that *nemesis* acknowledges a customary behaviour of living – a social *ēthos*.

The second, post-Homeric part of the book starts with the evaluation of *nomos* in poetry. Hesiod shows us that he was leading a harsh life as a shepherd, which is depicted as the *nómos* of mortal life. Most of the time, the meanings are the same as in Homer, although Hesiod surely offers a wider variety. For example, Zeus issued a *nómos* to humans to keep them from commiting violence and allow them to live according to *dikē*, unlike animals. This reveals a deep philosophical thought about the freedom of will. The author states that it would be a simplistic view of *nómos* here if it were purely regarded as a 'law-giving command of an omnipotent god', rather than seen in a connection with the ordering of human and animal life or behaviour in general (a manner of living). It is also described in Hesiod in relation to agricultural activities and sacrifices. Despite that, it could be noted that Hesiod had an awareness of a sense of 'law', at least as natural law (justice), although Zartaloudis does not interpret *dikē* as justice, but as a way of existing (human existence as opposed to animal existence). It is less a juridical ordinance than a normalcy or *ēthos* – a way of being of mortals, abided by a form of life. It demarcates the particular existence of humans tied to the experience of a *polis*, which shows the presence of a remarkable early 'anthropological' sense in Hesiod. In *Works and Days*, *nómos* is also used as a reference to a way of doing something, as a regular ordering. Thereafter, the reader is concisely introduced to the utilization of *nómos* in other poetry works, such as of Alcman and Theogonis, where the notion oscillates from worship rites to other customs and conventions, which are not specified by the author. The most important conclusion that the reader is offered is that the notion of a 'law-norm' is too farfetched.

An important insight into the world of *nomos* could be found in Heraclitus' cosmology, which is differently interpreted by many historians and philosophers. In fr. 11 of a unique source called *Περὶ Κόσμου* (or *On the Universe*), the word *nemētai* is used in the sense of 'grazing' or 'being driven', as well as 'distribution/sharing'. Zartaloudis argues that Heraclitus

refers to the earth as a cosmological 'state', rather than as a 'physical element', or as the pole of the *kosmos* acting as a force on beings – enabling them to inhabit the earth. On the other hand, fr. 114 offers a controversial perception of *theios nómos*, since most commentators understand it as 'divine law' or 'natural law', which is eternal and abides all humans. Despite such views, the author chooses a different approach, emphasizing the habitual, or customary aspect of *nómoi* of the people, which are then linked to the cosmological source of everything – the One, the *logos* or the *Nómos.* He points out that it is crucial to analyze what *theios* signifies, having in mind the common misreadings, although generally the supremacy of the divine is not placed in doubt. Numerous fragments indicate that the idea of the One (*hen*) is central to Heraclitus – the *Nómos,* uniting the opposites and providing dynamic harmony. Therefore, Zartaloudis suggests a reading of Heraclitus' phrases as cosmological, meaning that they are pointed towards the ordering of the cosmos.

The next piece of the puzzle is unravelled through Pindar's use of *nemō*, which denotes a 'norm, custom or tradition'. The fragment 169a is presented as one of the most significant among other Pindar's fragments because of its contentious nature, seeing how the interpretation of *nómos* varies from abstract and philosophical, such as cosmological, to more practical ones, as are those associated with conventions. The author also outlines the context of the demigod Heracles and Pindar's depiction of his use of violence, which presents a contrast between Heracles' *nómos* and that of the mortals. Heracles is the one who brings justice and order with his violent hand, proving that justice and violence may be in conformity with one another (differently than in Hesiod), which is the prevalent view among the researchers. This seems plausible and Zartaloudis agrees with it, stating that although Pindar's attitude towards Heracles can be seen as ambiguous – it is at the same time commonplace: Heracles carries out the will of Zeus in his heroic deeds, acting wrongly (outside of customs), while ever remaining faithful to his 'nature'. Agamben's assessment of Pindar suggests that the *nómos* achieves the union of justice and violence, while Hölderlin's interpretation includes the notion of the 'highest' condition or state for both mortals and immortals. *Nómos* remains ever inaccessible and supreme in the sense that mortal and immortal law are always mediated. This part of the book discusses several other arguments on the relationship and interconnection between justice and violence, leaving, however, the matter open to further discussion and re-interpretations.

In Athens of the sixth and fifth century BC written laws were becoming more frequent and widespread in use. *Nómos* was mainly used to describe 'laws' that received authority from the gods, but also through conventions. Despite that, *nómos* does not become exclusively a designa-

tion of law – at least in the tragedian poems. Aeschylus refers to *nómos* in many ways, but the main connotation is 'common use or usual way', especially in a worship context, while some authors plausably claim that it is in the *Suppliants* that the earliest political meaning of the word can be found. On the other hand, in Sophocles the *nómoi* are of divine origin – eternal laws, even though the notion of a custom could be seen as well in some passages of the fr. 937 or *Oedipus at Colonus*. We are eventually pointed towards the play *Antigone*, where the *nómoi* of burial takes central stage. The very first use of it refers to the valid observance of a custom, while the next implies a legislative connotation and the *nómoi* of the *polis*. The author professes that another reading is possible, since these words are coming from the ruler of the *polis*, suggesting that the source is the monarch's will, rather than the *polis* itself – holding that both interpretations remain open. Antigone herself invokes another meaning of *nomima*, which emphasizes the eternal and divine aspects, prescribing a way of life in accordance with the cosmic order. She boldly declares her will to breach the mortal decree rather than contravene the divine *nomima.* Zartaloudis maintains that any understanding of Antigone's situation as a legal despute misses the non-juridical meaning that Sophocles had in mind, because Antigone considers Creon's decree only an order of an official – *kērugma,* as opposed to the 'law' of the *polis.* She finds it evident that Creon has overreached his authority, while the *nómos* she abides by does not require legitimisation. The last of the tragedians is Euripides, who uses *nómos* prevalently as 'law, custom or traditional morality', which were at that time mixed together in practice, having in mind the relative scarcity of written laws. Despite that, Zartaloudis directs the reader also to the *nómos* of the gods, usually tightly linked to the norms of the *polis*. For example, Hippolytos' devotion to one goddess refers to a *nómos* observed by all mortals – being courteous towards the gods, in accordance with the divine *nomos*, by not serving Artemis and Aphrodite at the same time, while in a different poem Hecuba expresses that human sacrifice goes against a universal way of being (the divine *nomos*). Another interesting verse in the *Suppliants* shows that Euripides also alluded sometimes to the written laws, while praising them as a defence against tyranny. The author of the book states that, for Euripides, such an „appeal to the superior *nómos* in the encounter of moral contingency seems pertinent against social disintegration". Afterward, a few more common uses of the term are examined, particularly in the meaning of a custom.

Finally, the last chapter focuses on *nomos mousikos,* prior to the time of Plato. The term *mousikē* is not reducible to the sense of 'music', but rather encompasses a rich and vast set of cultural practices. No expression of authority and normalcy (in a wider sense of general behaviour and con-

sensus) could pass without *mousikē*, and it can be perceived as ritualistic as well, because it also implied movement. Many poets connect the Muses to *mousikē*. Pindar, for instance, illustrates the Muses' role in pleasing Zeus through *mousikē*, while Euripides relates the neglect of the Muses with perishing of life. Etymologically, the term *Mousa* comes from a root that may bear many different connotations – a desire for creativity, mountains, meditative reflection etc. Zartaloudis then meticulously depicts the link between the sound (music) and the word (*logos*) in Greek culture. Divine musical instruments such as the lyre were significant, since the articulation of sound was used for conducting the *kosmos*, which could be the ground for the later notion of *harmonia.* Therefore, the essence of every act was broadly musical for the Greeks – as a cosmic activity at play. *Mousikē* thus meant the indistinctness of language, song and dance, as an experience of living – inseparable from the *nomós* of ritual action. On the other hand, evidence of the *nomos* in a musical sense remains limited and leaves the musical use of the word quite unclear, although Zartaloudis offers us some insight as to what it could be. Particularly since law was mostly administered orally – the practice of poetic (re)production was probably present at the time, either for praising the gods, poetic creativity or 'law-giving'. In the conclusion, the author states that this bond between social practices and music was more obvious in the Classical era and fully advanced by Plato, especially when it came to education.

The Birth of Nomos by Thanos Zartaloudis contains an in-depth and exhaustive analysis of the socio-political and cultural practices, customs and beliefs of the Greek society of the archaic period, with the goal of achieving a complex genealogy of the ancient words *nómos* and *nomós*. Elucidating the variety of uses of the two words that would merge into one of the most significant words in the Classical era and well known for the meaning of 'law' – Zartaloudis leads the reader through numerous poets of the time and challenges many commonly established interpretations of their poetry and the terms in it. With its interdisciplinary character that combines legal and classical philosophy with hermeneutical insights in a historical context, this valuable study has much to offer to any social scientist, as well as anyone with an interest in the Greek society and especially the origins of the Western legal tradition.

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