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THANOS ZARTALOUDIS, *THE BIRTH OF NOMOS*, EDINBURGH: EDINBURGH UNIVERSITY PRESS, 2019

This paper contains a critical assessment of the *The Birth of Nomos* (Edinburgh: Edinburgh University Press, 2019) of Thanos Zartaloudis. It describes the key assumptions made in this recent publication, as well as the content of each chapter, judging on its merits and defects.

Keywords: nomos, ancient Greek law, ancient Greek society, ancient Greek politics
Słowa kluczowe: nomos, prawo starożytnej Grecji, społeczeństwo starożytnych Greków, polityka starożytnej Grecji

The main purpose of this book is to "examine in some detail the uses of the term nómos" (p. xiv), customarily translated as 'law', as well as the verb *nemo* and its other derivates, with a particular emphasis placed on its semantical evolution, i.e. the development of *nomos* from its archaic, pre-judicial meaning(s), whatever they were, to the senses which seem to be closer to the modern notion of "law". Nevertheless, given the fact that the previous publications of Thanos Zartaloudis' (hereafter Z.) have been largely devoted to Giorgio Agamben's philosophy of law, one would expect that also his most recent book, the title of which announces a study of the essential category for the considerations of the Italian philosopher, would mainly constitute a defence of some of the Agamben' ideas and interpretations of the Greek *nomos*, or an effort to develop his methods presented in his famous "Homo Sacer"[1] to a wider body of texts. To my astonishment, Z.'s work

[1] *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, Stanford: Stanford University Press, 1998 (originally published as: *Homo Sacer. Il potere sovrano e la nuda vita*, Torino: Giulio Einaudi, 1995).

goes far beyond this horizon of expectations and takes into account a wide range of subjects, bringing together most (but not all, see below) of the literary evidences regarding the meaning of *nomos*.

The introduction, in addition to some methodological considerations, provides a brief overview of traditional theories on the etymology and the source meaning of the concept under study. Each time Z. points to their limitations, emphasizing that *nomos* has never been a semantic monolith, which could be sufficiently reduced to one context or sense (p. xxii). Simultaneously, the cited etymologies largely guide his own considerations: one of the listed hypotheses, originally formulated by Emmanuel Laroche, who searched for the original meaning of the verb *nemein* on the ground of 'ritual distribution-sharing', takes the reader to the first chapter, devoted to "Feasts and Sacrifices" in the Homeric tradition. Z. begins there by showing the role of feasts in archaic Greece, their social and religious functions, with particular emphasis on sympotic practices of sharing of food and wine. In light of the background outlined there, in ch. II (entitled "Nomos Moirēgenēs") Z. seeks to demonstrate in turn the 'close proximity' between *nemein* and *moira*. And, while giving surprisingly much attention to the second concept, already analysed in the previous section, he is using it as a 'case study': based on this example he clearly demonstrates, then, how archaic terminology, which draws its source from sacrificial rituals and practices of commensality, simultaneously resonates with social contexts; terms such as *moira*, *aisa*, *kosmos*, *dynamis*, and foremost *nomos*, as Z. shows, were already used in the times of Homer in a wide variety of ways, becoming a tool for conceptualizing ethical or eschatological intuitions related to 'destiny', and determining one's own place in the social as well as the cosmological order.

Ch. III ("the Nomos of the Land") sets out to delineate the socio-economic aspects of *nómos*, *nomós*, and the family of words to which they both belong. On that occasion, Z. goes far beyond the epic tradition, reaching for archaeological evidences and research hypotheses concerning the administration and distribution of worldly goods in the Dark Ages and the Mycenaean era. He also devotes much attention to the phenomenon of *apoikismos*, viz. "colonization" and the role of *oikos* understood as 'the settlement-kinship unit' (p. 102). His detailed analyses, unfortunately more often based on the Mycenaean tablets than on the text of Homer, lead the author to the assumption – postulated by many researchers before, for example by Carl Schmitt – that the meaning of *nomos* and the verb *nemein* have been largely grounded in the context of land distribution. At the same time Z. points out that these 'land-management' practices did not belong to the legal order in the present sense of this word, but rather constituted a "part of a ritualised nexus" and "juridical-political ordering" that could only be understood "in the sense of an *ēthos*, a way of life" (p. 119).

After his systematic investigation of the "pre-history of the Homeric age", in ch. IV ("Pastoral Nomos"), Z. explores the metaphorical senses of *nemein* and

nomos, offering an insightful view of the impact of the social and economic reality on the imagery and mindset of archaic Greeks. Further, the meaning of the figure of the shepherd is considered to be crucial for the political rhetoric known from both Homer and later epochs. The first part of the book, devoted to *nomos* in the Homeric tradition, closes with some considerations on the notion of *nemesis* presented in ch. V: here Z. argues that this concept did not mean originally the abstract 'revenge' or 'redress', but rather expressed a complex network of social dependencies related to distribution. Unfortunately, Z. ignores the potential of this thread here, as well as the abundant literature devoted to the issue of 'reciprocity'[2], leaving the reader somewhat halfway through the discussion.

With Chapter VI we move to the second, in my opinion, much weaker part of the book, devoted to the "post-Homeric *Nomos*", in which Z. presents plenty of textual analyses of archaic and classical literary sources, placing them among the previously distinguished contexts and meanings of the concepts under discussion. Here, the fact that these chosen texts are arranged in chronological order sometimes leads the author to list, almost mechanically, the subsequent meanings and examples of the use of *nomos* without providing the full context. This tendency can be seen in particular in the part devoted to archaic poets, as well as in chapter IX which concerns classical tragedy, where Z. keeps repeatedly noting the recurrent senses of these terms: *nomos* as a 'custom', a 'way of life', religious-*nomos*, *nomos* as a political term etc.[3] Earlier, Z. turns to Hesiodic tradition and shows how it develops the ambiguity of *nomos* and *nemein*, already visible in Homer's tradition, to control the topical richness of narration. Thus, *nomos* can be seen as a bridge between the economic, political and, finally, cosmological ("cosmonomical") levels or realms of the poetic work as a whole. Then Z. goes on to analyse Heraclitus (ch. VI), further exploring the cosmological and metaphysical potential of the verb *nemo* and its derivatives, and to Pindar and the famous motif of "Nomos Basileus" (ch. VIII), substantially determined by some influential and powerful (re)interpretations (especially of Hölderlin and Agamben). Here, he problem-

[2] The reader will find some references to R. Seaford*, Reciprocity and Ritual: Homer and Tragedy in the Developing City-State* (Oxford: Clarendon Press, 1994), as well as to the influential paper of W. Donlan 'Dark age Greece: Odysseus and his *hetairoi*' (published in C. Gill, N. Postlethwaite and R. Seaford (eds.), *Reciprocity in Ancient Greece*, Oxford: Oxford University Press, 1998, pp. 51–71), however, considering how important – according to Z. – (re)distribution of goods in the archaic age is for the conceptualization of the notion of *nomos*, the book lacks a broader discussion of ancient economy and its alleged difference from contemporary models of exchange – a thread which in recent years has become the subject of heated polemics. For a detailed exposition on this topic see more recently F. Carlà, M. Gori (eds.), *Gift Giving and the 'Embedded' Economy in the Ancient World*, Heidelberg: Universitätsverlag Winter, 2014.

[3] Although it is worth emphasizing the value of the subsection devoted to *Antigone*, which consists of a very useful introduction to the philosophical and political meaning of the Creon-Antigone conflict, capturing it in terms of fifth-century cultural and legal norms; simultaneously it contains a rich bibliography and problematizes some classic interpretations of this famous tragedy.

atizes some canonical interpretations of the Pindaric fr. 169a and examines them through comprehensive 'close reading' of Papyrus Oxy. 2450, which adds almost 24 verses to the previously known passage, and by enhancing its interpretation through the intertextual analyses of some other Pindar's fragments.

In ch. X ("Nomos Mousikos"), which, for reasons that remain unclear to me, closes the book, at the same time breaking away from the previously adopted chronological method of grouping material, Z. returns to the thesis put forward in ch. I and further develops his main argument on the crucial importance of the ritual context for the "birth" and development of *nomos*. Interestingly, the problem of the relationship between law and poetry – as the reader could see, often organized around the topic of 'justice' – is also taken here. For this purpose, Z. examines in detail the practices of oral transmission of laws as musically sung (which, however, as he himself points out several times, are reported in late sources, and thus constitute the subject of much controversy). Unfortunately, considering the fact that decisions and resolutions of semi-mythical law-givers like Charondas or Zaleucus were called *thesmoi*, not *nomoi*, and the oldest examples of the use of *nomos* in musical contexts come from the 5th century BC, the reader may still wonder if the social-worship context – determined by the interrelationships between the ritual, poetry-singing and any other forms of "social ordering", visualized with great erudition by the author – actually reflect the "birth" of this key concept itself.

On this occasion, few criticisms may be offered. First of all, Z. repeatedly emphasizes that our own perception of the legal sphere, nowadays deeply institutionalised and relatively autonomous from other areas of political and social activities, poses a methodological challenge – thus, while presenting a multifaceted examination of the title term *nomos*, he is trying to avoid any arbitrarily and anachronistically accepted limitation or restriction on it meaning. The constant fear of abusing the modern technical terminology of legal research and projecting some unjustified evolutionary model of interpretation of the chosen concept seems to result, however, in the marginalised role of the 'legality' itself: the nature of legal sanctions, institutional procedures and authorities that enforced them etc. This, in turn, may raise doubts whether it is possible to explain – without an in-depth analysis oriented towards the development of legislation in Greece, based not only on literary texts but also on the inscribed decrees and laws – how the notion of *nomos* began to be used by Greeks with strong legal implications.

Moreover, while all pieces of this multi-level project are rich in their own right, Z.'s caution in framing the general interpretation of the analysed passages and examples of the use of *nomos* sometimes gives the whole book an impression of disorderliness or inconsistency. That impression is strengthened by the lack of clear exposition of what each chapter seeks to discuss. The author doesn't offer a summary of the main points either. As a consequence, the

reader may be a bit surprised when so much space is devoted to the hypotheses about the division of the land in the Mycenaean era, while other topics, e.g. the relation of the term *nomos* to some legal institutions of Greece (often evoking this concept already at the lexical level, ie. 'astynomos', 'agoranomos' etc.), as well as the ambiguity of the term in court speeches, are silently dismissed by the author. Lastly, the typographical errors should be noted, especially in Greek words and their transcription into the Latin alphabet, e.g. *mōros* instead of *moros* (p. 50), *horthos* and *horthonomoi* instead of *ortho-* (p. 265), αἰδῶς instead of αἰδώς (p. 154) etc.

Summing up, the book is an intriguing proposal to look not only at the title concept, but also at the development of the normative and legal discourse in Greece from a perspective that is somewhat external to the topic of law. Therefore, the fact that Z. does not seem particularly interested in the issue of Greek legislation and the legal history as such, while being a significant disappointment for someone and, apart from that, being the book's main weakness, paradoxically distinguishes it from many other studies relating to the concept of *nomos*[4].

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[4] See for example M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy*, Oxford: Clarendon Press, 1969; ibidem, *Language and History in Ancient Greek Culture*, Philadephia: University of Pennsylvania Press, 2009; R. Turasiewicz, *W kręgu znaczeniowym pojęcia* nomos, "Meander" 29 (1974), pp. 7–22; A. Lesky, *Grundzüge griechischen Rechtsdenkens II*, "Wiener Studien" 99 (1986), pp. 5–6; K.J. Hölkeskamp, *Schiedsrichter, Gesetzgeber, und Gesetzgebung im archaischen Griechenland*, Stuttgart: Franz Steiner, 1999; C. Pelloso, P. Cobetto Ghiggia (eds), *Νόμος βασιλεύς. La regalità del diritto in Grecia antica*, Alessandria (Italia): Edizioni dell'Orso, 2017 ("Rivista di diritto ellenico" 7).

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