CHAPTER 2

Relativism, King of All

Herodotus' exploration of diverse human populations and their equally wide-ranging *nomoi* (νόμοι) contributed to one of the most significant debates in fifth-century intellectual culture – on relativism and its implications for traditional ethical norms.[1] Indeed, as we shall see in Chapter 7, already in the fourth-century *Dissoi Logoi*, the *Histories* was being read and engaged with as an influential text on the subject. It is for this reason unsurprising that there has been much important work on "custom," "tradition," and "law" in the context of Ionian ethnography and the ethnographic excurses in the *Histories*.[2] These passages serve a circumscribed but crucial diegetic function: in giving pause to the diachronic narrative progression, *nomoi* draw a relatively static portrait of a given society, often in relation to its confrontation with the imperial power of Persia.

The etymological roots of *nom-* terms in νέμω (*nemo*), "to allot, dispense, distribute," have been used to argue for early associations with distribution and lawfulness.[3] Ancient authors may have made the

[1] Notable treatments of *nomos* and the *Histories* include Stier (1928), 239ff.; Heinimann (1945), 23–36, 78–83; Pohlenz (1953), 425, 428–30; Gigante (1956), 107–9, 123–45; Evans (1961), (1965), (1991), 9–40; Immerwahr (1966), 319–22; Herrmann (1967), 116–24; Waters (1971), 97–9; Dihle (1981), 59–61; Giraudeau (1984), 115–35; Redfield (1985), *passim*; Humphreys (1987); Gould (1989), 94–109; Lateiner (1989), 145–62; Bloomer (1993); Scanlon (1994), 171–4; Payen (1995), 308–38; Hardy (1996); Thomas (2000), 102–34; Munson (2001), 88–100; Mikalson (2003), 13, 28, 50–1; Baragwanath (2008), 107–10. On cultural pluralism in Herodotus, see Apfel (2011), 191–206. For *nomos* and the sophists, see Guthrie (1969), 164–75; Ostwald (1969), 24–5, 31, 35; Kerferd (1981), 54–5, 111–30.

[2] Major contributions to the vast study of ethnography in the *Histories* include Redfield (1985), 97–118; Thomas (2000), *passim*; Munson (2001), 135–72, especially 156–72; Bertelli (2001), 67–94; Bichler (2004); Rood (2006); Figueira and Soares (2020). For specific case studies: on Egypt, see A. Lloyd (2002), 415–36; Scythia, Hartog (1988); West (2002), 437–56; Babylon, Kuhrt (2002), 475–96; Skinner (2012), 238–48. On women and *nomoi*, Rosellini and Saïd (1978), 949–1005.

[3] Benveniste (1948), 79, "νέμω signifie 'partager *légalement*; faire une attribution *régulière*'"; accepted by Chantraine s.v. νέμω. Beekes (2010) s.v. νέμω, finds the derivations of meanings from the verb

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connection as well; there is evidence for polyptoton in the collocation of νόμος and νέμω. The juxtaposition made could be contrastive – Theognis complains to Cyrnus that the new inhabitants of the polis were those who formerly "knew neither justice nor laws" (1.54 Young: οὔτε δίκας ᾔδεσαν οὔτε νόμους), since they used to "pasture" (1.56: ἐνέμοντο) in the fields like deer.[4] However, in Aeschylus' *Suppliants*, the chorus of Egyptian women wish for the good government (670: εὖ νέμοιτο) of the city of Athens in return for the people's honoring of Zeus, who sets fate right with law (673: νόμῳ). In the pseudo-Platonic *Minos*, Socrates plays upon the associations of νομεύς, νέμω, and νόμος (317d–18a). There is one instance in which νέμω and νόμος are related in the *Histories*, when Herodotus finds that for the Egyptians and the Persians alike the burning of the dead is contrary to custom (3.16.3: οὐδαμῶς ἐν νόμῳ); regarding the Persians, they do not even "allot" (νέμειν) corpses to gods. In these instances, it is unclear the extent to which the *figura etymologica* was activated by the audience, but since it is not prominent in the *Histories*, the following analysis will focus upon *nomos* alone.

Beyond etymology, conceptualizing *nomos* has long exercised the energies of scholars. In an authoritative study, Martin Ostwald argued that "νόμος in all its uses describes an order of some kind, which differs from other words for 'order,' such as τάξις, in connotation that this order is or ought to be regarded as valid and binding by those who live under it . . . the crucial point is that, regardless of origin, it is recognized and acknowledged as the valid norm within a given milieu."[5] This captures well the implicit deontic potential of the term. Writing specifically on Herodotus, James Redfield observes:

> *Nomos* means something more explicit than *ethea*, something more definite as command or prohibition. Very often a *nomos* is a written law (and that may be the original meaning of the word); when used for a custom it means something which can be put into words and stated as a rule. *Nomoi* are specifically human; the word has no relevance to animals. Furthermore, *nomoi* are the sign of a certain level of culture; every people has its *ethea*, but

such as Benveniste's "problematic." Etymology has been important historically as an avenue of interpretation, see Schröder (1917), 197, who connects the term to νεμ-, and pasturage; cf. too Demos (1994), 99.

[4] For further conjunctions, see *TrGF* F 1064 Kannicht; Eur. *Hec.* 866–8; Eur. *Supp.* 378–9; Antiph. 5.10.

[5] Ostwald (1969), 20–1. Pohlenz (1948), "das Brauchtum"; Havelock (1957), 137–8, gives "custom-law" and "usage-that-is-solemn"; Herrmann (1967), 116, "Sitte oder Brauchtum," although it can also mean, 117, "sakrale Regel," "religiöse Sitte," "kultische Übung," close to "kultische Regel," "sakral Norm," "religiöse Vorschrift."

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> the most savage people have no *nomoi* at all . . . they are incapable of stating rules for themselves. (1985), 98–9

The contrast of *nomos* with *ethea*, "customs" or "manners," signals that *nomos* is distinct in its imposition of obligation and its reference to a culturally advanced set of behaviors.[6] In the *Histories*, the Androphagoi have savage *ethea*, as practitioners of cannibalism, but observe no *nomos* (4.106).[7] *Nomos* can be written or unwritten; it can be interpreted variously as "custom," "tradition," or "law." To capture this polyvalence, it is simplest to transliterate *nomos* – and the synonyms *nomima* and *nomaia* – with the understanding that it can refer to each of these definitions.[8]

Herodotus' interest in including foreign *nomoi* appears to have its roots in epic as well as in geographical prose literature. This earlier fictional and factual mapping of the world has left little to clarify the *histor*'s use of *nomos* as an index of ethnographic research.[9] Nonetheless, there are suggestive hints. We are told that Charon of Lampsacus, a near contemporary of Herodotus, composed a *Cretan Histories* in three books, which included a discussion of the *nomoi* of Minos.[10] Hecataeus of Miletus' oeuvre included ethnographic excurses close to those found in the *Histories*, commenting on local geography, flora, fauna, and cultural practices. Tantalizingly, Plato's Hippias boasts that his epideictic *Trojan Speech* included a demonstration of πάμπολλα νόμιμα καὶ πάγκαλα, "manifold and quite seemly *nomima*."[11] Were Herodotus' predecessors extant in this field, they would likely have provided rich information on *nomos* interpreted as a traditional rite, custom, usage, pertaining to clothing, diet, religion, medicine, language, and marriage practices.[12] Even in their absence, Herodotean scholars have plowed a deep furrow discussing Herodotus' attitude to foreign cultures.

[6] See Hes. *Theog*. 66, for their presence among the divine.

[7] Munson (2001), 98–100, intriguingly links the homogeneity of human *physis* with *nomos*, given the general "human impulse toward self-regulation and culture" (100); the Androphagoi's rejection of *nomoi*, however, present an obstacle to this model.

[8] With, e.g., Guthrie (1969), 56–7, *pace* Giraudeau (1984), e.g., 135, who artificially separates the "religious" meaning from its "civic" one.

[9] I have been unable to find any *nom-* terms in the fragments of Euagon of Samos, Deiochos of Prokonnesos, Eudemos of Naxos, or Hecataeus of Miletus, though the loss of the majority of their works hardly makes this conclusive.

[10] *FGrH* 262 F 1. The late statement that Hellanicus composed τὰ Βαρβαρικὰ Νόμιμα from the works of Herodotus and Damastes, *FGrH* 4 F 72 is of interest, if ultimately unverifiable. For this work, which *FHG* 1.69 thought a forgery, cf. also *FGrH* 4 F 73, where the narrative of Zalmoxis is nearly identical to Hdt. 4.95. More generally, see Fowler (1996), 66–7.

[11] For Nestor's speech to Neoptolemus, see DK 86 A 9 = Pl. *Hp. mai*. 286b.

[12] For these practices in the *Histories* as *nomoi*, see Giraudeau (1984), 122–6.

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Much less prominent are studies considering Herodotus' relation to the contemporary philosophical marketplace of ideas. This is all the more surprising given the prominence of the debate on relativism in philosophical circles. As Dihle notes: "Reflection on the nature, impact, and differences of *nomoi* was, as the scanty remains prove, also the subject of contemporary philosophy."[13] Diogenes Laertius preserves a provocative notice on the mid fifth-century philosopher, Archelaus. According to this admittedly late report, the teacher of Socrates philosophized on *nomoi*, both the fine and the just, and attributed ethical concepts to the field of *nomos* in its familiar opposition to *physis*: "for he philosophized about the laws, both the noble and the just;" "that justice and shamefulness are not by nature, but by convention" (DK 60 A 1: καὶ γὰρ περὶ νόμων πεφιλοσόφηκεν καὶ καλῶν καὶ δικαίων; A 2: καὶ τὸ δίκαιον εἶναι καὶ τὸ αἰσχρὸν οὐ φύσει, ἀλλὰ νόμῳ).[14] The decoupling of ethical values from objective reality and their placement in the realm of *nomos*, "convention," has serious implications for custom, tradition, and law. If this *testimonium* preserves accurate information, Archelaus is among the first to draw attention to this opposition. It is difficult, however, to put too much weight on the late report, and so we should remain agnostic as to his influence on philosophy and *nomos*.[15]

Firmer ground emerges with the historical Protagoras, who famously enunciated a relativistic thesis in his seminal *Truth*, or, *The Overthrowing Arguments*.[16] Its incipit survives as follows: "Of all things the measure is man, of those that are (the case), that/how they are (the case), and of those that are not (the case), that/how they are not (the case)" (πάντων χρημάτων μέτρον ἐστὶν ἄνθρωπος, τῶν μὲν ὄντων ὡς ἔστιν, τῶν δὲ οὐκ ὄντων ὡς οὐκ ἔστιν).[17] While nearly every word in this fragment is

[13] Dihle (1981), 61, "Reflexion auf Wesen, Wirkung und Verschiedenheit der *Nomoi* war aber, wie es die spärlichen Überreste erweisen, auch Gegenstand zeitgenössischer Philosophie." For Presocratic references to *nomos*, DK 21 B 2.13; DK 22 B 14, B 114, B 33.

[14] For Archelaus, see Kahn (1981), 102–3; Betegh (2016).

[15] There is reason for optimism, as the concern for *nomos* occurs elsewhere in the tradition on Archelaus, cf. DK 60 A 4.6. By the time of Empedocles, *nomos* could be defined as tradition *as opposed* to what is true, DK 31 B 9.5. Seemingly opposite is B 135.1, on the murder of living things, which begins with the injunction τὸ μὲν πάντων νόμιμον ("that which is lawful for all").

[16] Although Heraclitus may have anticipated him, for which, see DK 22 B 61. On Protagoras and relativism, see Guthrie (1969), 165–75; Jordan (1971); McDowell (1973); Kahn (1973), (1981); Farrar (1988), 44–98; Bett (1989); Schiappa (1991a), 117–33; Caizzi (1999); Woodruff (1999); Too (2005), 30–45.

[17] Trans. Berkel (2013), 37. DK 80 B 1 = Sext. Emp. *Math.* 7.60. Cited in Pl. *Tht.* 152a2–4 and Diog. Laert. 9.51. Important for interpretation of this fragment are Versenyi (1962); Guthrie (1969), 166–75; Mansfeld (1981), 43; Barnes (1979), ii.239–51; Kerferd (1981), 85; Lee (2005); Zilioli (2012); Berkel (2013), 37–68.

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debated, the main outlines are accepted, namely, that the philosopher advances a form of relativism compatible with human perception and judgment. Though we have lost the treatise, Protagoras' man-measure doctrine was, fortunately, the beneficiary of serious and sustained philosophical interest, at least by the fourth century. Its implications for *nomos* will become clear from a brief look at Plato's construal of Protagoras.

Plato's relatively uncontroversial interpretation of the doctrine takes the following form: "doesn't he say something about like this, as things seem to me so they are to me, and as things seem to you, so they are to you – and you and I are 'man'?"[18] Protagoras expounds a form of subjective relativism, whereby whatever an *individual* perceives is infallibly correct.[19] In this form of relativism, differing individuals can apply opposing predicates to what is apparently the same subject without inconsistency. If honey is sweet to me, but bitter for you, these are equally true predicates for us both.[20] However, in addition to this position, in the *Theaetetus*, "Protagoras" equally stakes out a claim for what has been called "social" relativism. Reflections on the individual transition into a discussion of the behavior of communities. Socrates gives voice to Protagoras' position as follows:[21]

> οὐκοῦν καὶ περὶ πολιτικῶν, καλὰ μὲν καὶ αἰσχρὰ καὶ δίκαια καὶ ἄδικα καὶ ὅσια καὶ μή, οἷα ἂν ἑκάστη πόλις οἰηθεῖσα θῆται νόμιμα αὑτῇ, ταῦτα καὶ εἶναι τῇ ἀληθείᾳ ἑκάστῃ, καὶ ἐν τούτοις μὲν οὐδὲν σοφώτερον οὔτε ἰδιώτην ἰδιώτου οὔτε πόλιν πόλεως εἶναι. (*Tht.* 172a)

[18] DK 80 B 1 = Pl. *Tht.* 152a. See also Pl. *Cra.* 385e = DK 80 A 13. Closely related is *VM* 3.

[19] Cf. Pl. *Prt.* 334a–c and a play on Protagorean relativism at 334e. As Guthrie (1969), 171, observes, this has a pedigree in earlier philosophy: "Anaxagoras told his pupils that 'things would be for them such as they supposed them to be,' and Empedocles and Parmenides emphasized the connexion between a man's physical condition and his thoughts." For the fragment including judgments, see Barnes (1979), ii.240–1; Mansfeld (1981), 44.

[20] For what may be an actual exemplum of Protagoras, Pl. *Tht.* 152b1–c8, and for this passage, Kerferd (1981), 86–97. The heated debate on whether this variability is the product of an internal principle of honey or exists only in the perception of the individual is of no importance for our purposes; Democritus' physics may be of interest, however, DK 68 B 9. On the relationship between relativism and truth, Woodruff (1999), 303–4, puts forward four potential positions that might have been held by the historical Protagoras: (1) that contradictory opinions are true, (2) that qualifiers such as "to me" and "to you" mean that there is no true conflict between differing opinions, (3) that opposites permeate all objects and us and make us have shifting perceptions, and (4) that truth is complex enough to encompass opposing views if the world is created out of opposing forces. For subjectivism, see Burnyeat (1976), 59–62.

[21] Cf. also DK 80 A 21a = Pl. *Tht.* 167c and 177c–9b. On relativism and Protagoras' role as an educator, Guthrie (1969), 171–3.

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> And also, as concerns public affairs, the noble and the shameful, the just and the unjust, the holy and the unholy, whatever each polis conceives and lays down as *nomima* for itself, these are also the truth in each polis, and in these things no individual is wiser than any other nor is polis wiser than polis.

According to Plato, Protagoras holds that whatever the normative moral code of a polis, it is an outgrowth of a unique society rather than the result of an objective governing order. It is easy to underestimate the radical nature of this thesis, but cultural relativism does more than acknowledge that differing societies engage in differing practices, it entails the proposition that the traditional practices of a given society are ethical for it, however disturbing they may be from an etic perspective.

It is clear that this argument made an impact on Plato's Socrates as well. In the *Crito*, Socrates defends himself to Crito for remaining in Athens and suffering the death penalty instead of escaping the polis as a fugitive. To convince his interlocutor of the correctness of his decision, Socrates apostrophizes Athens' *nomoi*. In their imaginary dialogue with him, the laws point to the hypocrisy of Socrates' benefiting from the city all of his life but then not adhering to their justice system. They offer an analogy according to which, like a father, the laws of the city are not on an equal footing with those who observe them and instead require total obedience. Just as a father can strike his son and not be struck – an example of a *nomos* that was by then proverbial, as we shall see – to an even greater degree the polis merits the respect of its citizenry if it strikes them down (50e–1c).[22] Even if the laws mandate what is unjust, as in their decree of death for Socrates, they are no less binding.

In discussions of cultural relativism, the network of *nom-* terms serves as a given society's expression of its own ethical norms, its own justice.[23] Its contingency was voiced by the fourth-century sophist, Lycophron, in his remark that *nomos* is "a guarantor of justice to one another" (Arist. *Pol.* 1280b) but one that held no power to make citizens noble and just. The coincidence of a society's conventions, laws, and customs, on the one hand, and its ethics, on the other, has the potential for volatility in particular in the innovation of *nomoi* or in using the language of habitual

[22] Plato's stress on the necessity of obedience to *nomoi* would have had particular resonance for his fourth-century audience, for whom an important distinction had been made between *psephismata* that were passed by the popular assembly and *nomoi* that were given to a special board of lawgivers, the *nomothetai*, for which, see Ostwald (1986), 520–4. While laws began their lives in the assembly, they were submitted to and ratified by the *nomothetai*, Hansen (1979), which may allow Socrates to avoid obedience to an ignorant Athenian *demos*.

[23] E.g., DK 22 B 44; DK 82 B 11a.30. At Arist. *Nic. Eth.* 1129b11–14, justice is obedience to *nomos*.

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unjust behavior as *nomos*. In such instances, a tension between popular justice and *nomos* emerges, one that calls into question their identity. Given the exiguous remains of the Presocratic philosophers on the subject, it is necessary to turn to another avenue of intellectual culture, in Athenian drama, to assess its impact.[24]

As a comedy inspired by the "New Learning" revolutionizing science, rhetoric, and ethics, Aristophanes' *Clouds* presents uniquely important evidence of the ethical implications of subjective and cultural relativism. In the comedy, an Athenian father, Strepsiades, works to enroll his son, Pheidippides, in Socrates' philosophical school, "The Thinkery." Pheidippides commences his education with the arrival of two *logoi*, the Better and the Worse, which engage in a spirited rhetorical contest to persuade the new pupil of the necessity of adopting their respective methods. It is noteworthy that when the Worse *logos* starts his pitch, in his very first words he stresses his impact on tradition by revealing that he is called the Worse *logos* by the intellectuals "because first of all I contrived to speak what is the opposite of our *nomoi* and opposite to what is just" (1039–40: ὅτι πρώτιστος ἐπενόησα τοῖσιν νόμοις καὶ ταῖς δίκαις τἀναντί' ἀντιλέξαι).

The structure of the antilogy between the Better and Worse *logos* conjures up Protagoras' much vaunted declaration that there were "two *logoi* opposed to one another on every matter" (DK 80 A 1). But the comedy undermines the interpretation of the claim that Protagoras appears to have made, namely, that these arguments should equally obtain. In the *Clouds*, the Worse *logos* is compromised from its very inception, although it does in the end "win" the debate against its opponent.[25] In any case, the allusion to Protagorean philosophy continues in the reference to the disturbance of *nomos*. Protagoras' position on the equal validity of differing *nomoi* in human societies was deployed by the *Clouds* to challenge the *internal* validity of a polis' customs and its sense of justice. After Pheidippides graduates from the Thinkery, he offers a dramatic example of the disturbing outcomes that can emerge from this philosophy of relativism.

Following his return home, Strepsiades requests that his newly minted *sophos* sing something from the great Simonides or Aeschylus. Pheidippides at first rejects his father's promptings and finally consents to sing something avant-garde, something from Euripides. He sings a tune in which a

[24] It is, however, implicit in Antiphon's *On Truth*, DK 87 B 44.
[25] See Apfel (2011), 53, with bibliography at n. 37.

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young man sleeps with his sister – a theme that his father unsurprisingly finds depraved. The argument that follows matures into a violent altercation, and Strepsiades complains after he is beaten by his son, "Nowhere is it customary for a father to suffer this (1420: ἀλλ' οὐδαμοῦ νομίζεται τὸν πατέρα τοῦτο πάσχειν)!" Yet Pheidippides, fresh from the Thinkery, is now equipped with a rhetorical arsenal to combat any opponent and uses this opportunity to display his skills and to justify his abuse of traditional norms.[26] Though we must remain sensitive to the generic deformation of philosophy in Old Comedy, it is clear that the humor from the scenario derives from its lampooning popular sophistic discourse.

The *agon sophias* begins with Pheidippides' picking up the thread on *nomos*: "Was it not a man like you and I who established this *nomos* first, and persuaded the ancients with his speech?"[27] Historicizing *nomos* as a human innovation rather than a divine one puts tension on its ethical mandate and exposes its arbitrary nature.[28] If persuasion of the masses is the measure of ethical norms, then it stands to reason that an individual in the present, such as Pheidippides, might reshape *nomos* with a more persuasive account of human action. The nature of his defense shifts to deflate his father's grievance against him by introducing a *nomos* allowing sons to beat their fathers. Pheidippides bolsters his legislation with the statement that a law that is of recent provenance is not thereby worse, ἧττόν τι δῆτ' ἔξεστι κἀμοὶ καινὸν αὖ τὸ λοιπὸν | θεῖναι νόμον τοῖς υἱέσιν, τοὺς πατέρας ἀντιτύπτειν.[29] The *Clouds* trades precisely on the fact that *nomos* is not hinged upon any objective standard but instead is subject to alteration and thus potentially a threat to popular conceptions of justice.[30] Pheidippides' sophistic legerdemain reveals the problematic status of *nomos* as an ethical determinant – if nothing objective underlies

[26] Prepared for at *Nub.* 904–5, 911–12. Traditional norms are detailed at 961–83, 985–99, 1002–23. The opposition to this is telling, cf. Archidamus at Th. 1.84.3: εὔβουλοι δὲ ἀμαθέστερον τῶν νόμων τῆς ὑπεροψίας παιδευόμενοι ("We are prudent, educated too ignorantly to look down on our *nomoi*.").

[27] *Nub.* 1420–2: οὔκουν ἀνὴρ ὁ τὸν νόμον θεὶς τοῦτον ἦν τὸ πρῶτον | ὥσπερ σὺ κἀγώ, καὶ λέγων ἔπειθε τοὺς παλαιούς;

[28] Dover (1968), ad 1421.

[29] *Nub.* 1423–4: "is it any less permissible for me, in turn, to establish a new *nomos* in the future for sons to strike their fathers in turn?" For the idea that women have to accustom themselves to new behaviors and *nomoi* upon marriage, see Eur. *Med.* 237–40. The collocation καινὸς νόμος is ominous in the mouth of Critias at Xen. *Hell.* 2.3.51, in particular as he was selected as one of the Thirty to restore τοὺς πατρίους νόμους, 2.3.2. Cf. too Aesch. *Eum.* 778, 808; Ar. *Av.* 1038.

[30] The historical contingency of *nomos* is also at stake in the disturbing conclusion drawn by some philosophers on *nomos* as a compromise against anarchy, as evident in DK 88 B 25; Pl. *Resp.* 359a.

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convention beyond the passage of time, then moral behavior can be interpreted as fluid.

As has been noted by others, Pheidippides' song contains a provocative intertext – one that is of particular interest for our purposes.[31] The comic moment in which Pheidippides is said to sing a salacious Euripidean ballad on sibling incest, ὡς ἐκίνει | ἀδελφός, ὦ 'λεξίκακε, τὴν ὁμομητρίαν ἀδελφήν (1371–2: "how a brother was screwing, god help me, his sister born from the same mother"), likely refers to Euripides' *Aeolus*. This fragmentary tragedy centered on another father-son debate, in this case, on the (im) morality of incest.[32] The young Macareus had secretly impregnated his maternal sister and needed to persuade his father, Aeolus, of the rectitude of marrying his sons to his daughters. In fact, Macareus does convince him to accept incestuous marriage.[33] The tragedy famously contained the line, "what is shameful, if it does not seem so to those practicing it (τί δ' αἰσχρὸν ἦν μὴ τοῖσι χρωμένοις δοκῇ;)?"[34] As E. R. Dodds notes: "The line understandably created a scandal. It shows just where ethical relativism lands you."[35] Moral norms are under threat, in this case through the language of "use." It is by interweaving this paratragic moment into the *Clouds* that Aristophanes reveals the extent to which morality is subject to revision. It can even be pressed into support for incest. Macareus and Pheidippides both illustrate the drama that results from an awareness of the relativism of cultural practices and the ability to deform traditional morality by the abuse of this realization.[36]

Euripides' *Phoenissae* is equally sensitive to the pressure on traditional ethics from the influence of relativism. A particularly lucid evocation of

[31] Dover (1968), ad 1372, "The play concerned is the *Aiolos*," and he notes its reception in Ar. *Ran*. 1080 and Ov. *Her*. 2. For an insightful discussion of the lost tragedy, see Telò (2010).

[32] Casali (1998), 706 n. 14.

[33] For the hypothesis, see *P. Oxy*. 2457.18–34. That the incest was considered unconventional by Macareus and his father is likely from Eur. frr. 17–19 and 37–8; see Mülke (1996), for its illegality in Athens.

[34] *TrGF* F 19 Kannicht; parodied at Ar. *Ran*. 1475: τί δ' αἰσχρόν, ἢν μὴ τοῖς θεωμένοις δοκῇ; Nestle (1911), 263–4, in the course of arguing for the irrationality of tying Herodotus to a vague "Ionian sophistic" as, e.g., Schwartz (1890), is probably incorrect to argue that τοῖσι χρωμένοις refers not to individuals persons but nations.

[35] Dodds (1951), 187. Telò (2010), 301, "It follows that the legitimization of incest between homometric siblings was expressly imputed in the play not only to filial deception, but also to paternal ineptitude." For *nomos* as the guarantor of the boundaries of right and wrong, Eur. *Hec*. 798–801.

[36] The mutability of law on the principle of relativism is a problem recognized by philosophers, such as the *Anonymous Iamblichi*, DK 89 6, a text that suggests that *nomos* is upheld *kata physin* because men cannot live in communities without it and cannot live alone because of the harshness of their environment. See also the Sisyphus-fragment, DK 88 B 25.5–10.

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this occurs in the context of Eteocles' bid for sole power in Thebes. He forestalls his brother Polyneices' claims of unjust treatment and impiety by calling attention to the instability of reference regarding the terms *kalos* and *sophos*: "if to all the same thing were by nature noble and wise, there would be no strife talking out of both sides of its mouth among humans: but as it is nothing is similar or equal for mortals except for names – but this is not the thing itself" (εἰ πᾶσι ταὐτὸν καλὸν ἔφυ σοφόν θ' ἅμα | οὐκ ἦν ἂν ἀμφίλεκτος ἀνθρώποις ἔρις | νῦν δ' οὔθ' ὅμοιον οὐδὲν οὔτ' ἴσον βροτοῖς | πλὴν ὀνόμασιν: τὸ δ' ἔργον οὐκ ἔστιν τόδε).[37] The double-tongued ἀμφίλεκτος is evocative of Protagoras' own professed ability to discuss any subject from a weaker or a stronger position, and it is clear that Eteocles' pronouncement is suggestive of the disturbing ends to which Protagoras' relativism is the means.[38] While Eteocles does not here use the language of *nomos*, this passage remains an important witness to the realization that ethical predicates can have varied but equally valid subjects. For Eteocles, this ultimately authorizes the pursuit of tyranny.[39]

As we have seen, fifth-century intellectual culture reveals a preoccupation with relativism. But while there is, at times, a comprehension of the validity of the diversity of human *nomoi*, relativism is also made to undermine traditional moral dictates against depravity, such as mandates against incest, the abuse of parents, and tyranny. This occurs through the metaethical reflection that cultural norms differ while being equally authoritative, which leads to a rejection of absolutist or objective standards of human action. The corrosion of moral intuitions occurs in each instance through the agency of the individual. Pheidippides, Macareus, and Eteocles each challenge the predominant consensus. Unique to Pheidippides is the explicitness of the impact of this corrosion on the social fabric, as he underscores the all-too-human roots of *nomos* in an individual's ability to persuade others. Evidently, the audience is meant to find such subversion menacing. In light of this, it is telling that even as late

[37] L-M "Dramatic Appendix" T 68 = *Phoen*. 499–502. Nestle (1941), 271, finds this a reproduction of Protagoras' *homo mensura* doctrine, as quoted by Guthrie (1969), 165 n. 3. It is noteworthy that Polyneices' speech in advance of this opposes the "simple *logos* of truth" (469) to the "unjust *logos*" (471).

[38] Mastronarde (1994), ad 499–525, "Both the language and the content of Et.'s speech are meant to associate Et. with the clever young men who used the training of the sophists to discomfit their traditionally minded elders and to justify selfish and aggressive behaviour. The denial of a stable foundation for assigning crucial moral predicates . . . recalls Protagorean relativism."

[39] The recognition of the relativism within value-systems leads to the notion that there is no sense in talking about rightness and wrongness objectively, a position that leads some to act in self-interest, e.g., Ar. *Nub*. 889–1114; Th. 5.105. For self-interest, see Chapter 3.

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as Plato's *Laws*, the Athenian Stranger is made to praise an obscure and otherwise unknown law according to which no youth could (a) query the rightness or wrongness of the laws and in fact (b) had to affirm them all divine.[40]

The Nomological Marketplace: *Nomos* and Relativism in the *Histories*

Turning to the *Histories*, it has long been recognized that *nomos* and its cognates play a key role: they embrace a wide variety of behaviors and organize human societies into predictable macro-historical agents; similarly, they create identities and polarities both between Greek city-states and between Greece and foreign peoples.[41] Additionally, they tell a diachronic story. *Nomoi* introduce a hermeneutic stance promoting cultural relativism whereby all cultural practices are equal.

Yet, whether or not the *Histories* is engaged in promoting cultural relativism has become a much-debated question. An increasingly prominent position argues that the text does not advance a position of relativism.[42] As an example, Tim Rood holds that "Herodotus' argument about Cambyses' madness does not show that he was a strict cultural relativist. He does not claim that all customs are equally valid, but rather that recognition that one's own perspective on others' customs is culturally determined should lead to tolerance."[43] This position can be addressed if we turn to what is perhaps the most famous passage on cultural relativism in the *Histories*, at the end of the "Madness of Cambyses" *logos*.[44]

[40] *Leg.* 634d7–e4.

[41] For Redfield (1985), 105–6, *nomoi* create symmetries. More recently, Thomas (2000) 102–34, argues that Herodotus demotes environmental factors in favor of *nomos* as an explanatory paradigm.

[42] Arguing against a sophistic *nomos* are Stier (1928), 240; Pohlenz (1937), 85. Several scholars have voiced dissent from the view that Herodotus gives voice to a strong relativism, e.g., Benardete (1969); Humphreys (1987), 212; Apfel (2011), 196.

[43] Rood (2006), 299.

[44] For Cambyses, see Waters (1971), 53–6; Gammie (1986), 180–2; Lateiner (1989), 163–86; Munson (1991); Christ (1994), 180–2, 186–7. The *logos*' relationship to sophistic thought has been long noted, e.g., Schwartz (1890), 11, "id sophistarum arti deberi ne ullo quidem eget argumento." ("No argument is needed to show that it is owed to the art of the sophists.") Modern scholarship has focused intently on this passage as evidence for Herodotean relativism: e.g., Munson (1991), 62, argues, "every sane man's inevitable recognition of an area of sacred customs within his own culture, carries with it an equally compelling inhibition from making fun of, much less interfering with, those of others, whatever these may be and however he may regard them." Thomas (2000), 27, considers 3.38, "suspiciously consistent with contemporary experiments with subjectivism and relativity." Cf. too Ehrenberg (1923), 5; Heinimann (1945), 80–3; Sinclair (1951), 54; Gigante (1956), 109ff.; Evans (1965), 146; Dihle (1981), 60; Redfield

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Nomoi in the *Histories* have up to this point represented the set of social behaviors that constitute a given group's ethical framework, a feature of humans that separates them from the animal world.[45] The reign of the Persian king Cambyses in many respects encapsulates the entire problem of Persian kingship, and it is thus of great interest that it is continuously presented as an attack on *nomos*.[46] After his successful conquest of Egypt, Cambyses shifts to an internal war against his Persian and Egyptian subjects and in the process continuously violates the traditions and laws of both peoples.[47] The narrative foregrounds a series of attacks against the king's family, wise advisor, Persian agemates, and finally, his court attendants. These increasingly erratic and under-motivated offenses eventually result in the narrator's diagnosis: "in many such ways he raged against the Persians and the allies" (3.37.1: ὁ μὲν δὴ τοιαῦτα πολλὰ ἐς Πέρσας τε καὶ τοὺς συμμάχους ἐξεμαίνετο).[48] The *logos* continues with an enumeration of the religious impieties the tyrant commits against the Egyptians, which fills out the statement that Cambyses attacked both Persians and their "allies," the Egyptians. Herodotus concludes:

> In every way, then, there are clear indications for me that Cambyses was totally insane. Otherwise, he wouldn't have attempted to mock things sacred and customary (ἱροῖσί τε καὶ νομαίοισι). For if someone were to put a proposition before all men, ordering them to select the noblest *nomoi* for themselves from all *nomoi* (νόμους τοὺς καλλίστους ἐκ τῶν πάντων νόμων), after examining them thoroughly each people would choose those

(1985), 99, 104; Thomas (2000), 103, 126. I am in agreement with much of what Asheri-Lloyd-Corcella make of 38.1, although I do not interpret this in terms of "Ionian science."

[45] In only one case can I find animals possessing *nomoi*, *TrGF* 346 Kannicht. Humans without *nomoi* are almost animals, cf. Theog. 1.54–8 Young.

[46] Benardete (1969), 79, is close to my own position: "As Cambyses shows by his deeds and speech that law may be no more self-evident than crime, he points to the wider problem of πίστις itself." See too Brown (1982).

[47] For which, see A. Lloyd (1988); Immerwahr (1966), 97 n. 57; Munson (1991); Christ (1994), 186–7; Payen (1997), 145.

[48] The emphasis on treating the rejection of justice as a symptom of madness has a parallel in Pl. *Prt.* 323a–b, where all partake of justice unless they are mad; it is possible (though in no way demonstrable) that the stress on Cambyses' insanity is a result of Herodotus' exposure to Protagoras' *homo mensura* doctrine. See Guthrie (1969), 187, "if a man sincerely believes that it is good to steal, then for him, so long as he believes it, it *is* good. But, just as it is worthwhile for a doctor to change a sick man's world by his drugs so that what appears and is to him sour appears and is sweet, so it is worth while for the majority or their appointed representatives, to whom stealing both seems and is bad, to work upon him by persuasion until his view – that is, the truth that is for him – is changed." Cf. too Mansfeld (1981), 45–8, who argues that relativism is designed to bring about consensus through the persuasion of individuals and downplays the importance of subjectivism, 47–8: "Whenever a plurality of persons agree, a common measure has arisen. This intersubjective truth is not independent of those who have agreed to it; it is only valid for them."

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> of their own. So, each people observes that by far the noblest are their own *nomoi* (οὕτω νομίζουσι πολλόν τι καλλίστους τοὺς ἑωυτῶν νόμους ἕκαστοι εἶναι). Then it is reasonable that no one other than a madman set about laughing at such things. One can form the conclusion that this is the way that all men have observed things concerning *nomoi* (ὡς δὲ οὕτω νενομίκασι τὰ περὶ τοὺς νόμους οἱ πάντες ἄνθρωποι) from other pieces of evidence and particularly from the following: during his reign, Darius called together those present of the Greeks and asked them for what amount of money they would be willing to eat their fathers after they died. They replied that no amount of money would be enough for them to do this. After this, Darius called those of the Indians called Callatians who *do* eat their parents and asked them, with the Greeks present and learning what was said through an interpreter, for what amount of money they would accept burning their dead fathers with fire. But they shouted loudly and ordered him to refrain from his impiety. So now these are things of settled custom, and rightly it seems to me that Pindar said that "*nomos* is king of all" (οὕτω μέν νυν ταῦτα νενόμισται, καὶ ὀρθῶς μοι δοκέει Πίνδαρος ποιῆσαι, νόμον πάντων βασιλέα φήσας εἶναι). (3.38)

Let us begin by outlining the structure of the argument and then discuss its connection to relativism:[49]

A. Cambyses was totally insane
   - A_1. Otherwise, he wouldn't have attempted to mock things sacred and customary
     - A_2. Each people observes that by far the noblest are their own *nomoi*
   - A_1. Then it is reasonable that no one other than a madman set about laughing at such things

B. This is the way that all men have observed things concerning *nomoi*
   - B_1. During his reign, Darius called together . . .. But they shouted loudly and ordered him to refrain from his impiety
   - B_1. And rightly it seems to me that Pindar said that "*nomos* is king of all"

The thesis that Cambyses was in fact mad comes on the heels of his final outrages against what is sacred and customary. He abused the Persians, opened Egyptian tombs, entered temples, and mocked divine images. Proof of the root of this conduct as madness is provided first by a

[49] See Munson (1991), 57, for an alternative breakdown of this passage, with close attention to Herodotus' metatextual commentary. Apfel (2011), 82–3, argues that 3.38 is the outcome of Herodotus' exposure to diverse human cultures, which she rightly connects to Protagoras, but unpersuasively argues is not an example of relativism.

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counterfactual – Cambyses wouldn't have laughed at the sacred and traditional things, as he just has in the temple of Hephaestus, were he not mad. This thesis develops with a further argument: all men consider their own *nomoi* just, a fact that the narrator proves with a hypothetical "nomological marketplace." If a marketplace with the world's *nomoi* existed, each individual would choose his own culture's as best. This latter remark recalls Protagoras' position on social relativism.[50]

Where Herodotus innovates is in the connection of the statement at A_2 that "all men consider their own *nomoi* best," to that of A_1 "no one other than a madman would laugh at (foreign) *nomoi* as Cambyses." Their conjunction merits clarification – why connect the consideration that one's own *nomoi* are best with the position that sober tolerance is the sane response to the diversity of human *nomoi*? This metaethical response to cultural diversity finds no parallel in Protagoras. Yet, by linking these judgments, Herodotus forestalls the potential objection that Cambyses' laughter at Egypt is a valid *Persian* response to alterity. In finding one's own *nomoi* best, the individual is led to transfer this awareness to an appreciation of the *nomoi* of others. Relativism and tolerance are represented as normative responses to diversity. Cambyses, however, fails to draw this conclusion. This is all the more damning since his position as Great King affords him a near-unrivaled vantage point from which to view cultural practices, in a manner akin to the nomological marketplace.

This is further clarified by the historical exemplum from the reign of Darius.[51] The king, like the audience of the *Histories*, sees the dynamics of relativism unfold in the clash between foreign cultures. Darius tests the tenacity of *nomoi* by positioning two cultural norms in opposition to one another, creating a bloodless culture war in miniature. When the stress test fails to sway either the Callatian Indians or the Greeks and ends with a reaffirmation of the supremacy of *nomos*, Darius and the external audience enjoy a double focalization. First, the etic viewpoint affirms the integrity of relativism, by focusing upon the legitimacy of both Greek and Indian burial practices. Cultural relativism holds that there is no objective

[50] On the intellectual overlap of Protagoras and Herodotus, see Apfel (2011), 130–4. Earlier Nestle (1941), 274 n. 36, had argued that Herodotus uses *nomos* in a Protagorean, sophistic context.

[51] Christ (1994), 187–9. Thomas (2000), 125, realizes that there is a debate here, though she does not quite identify it as I do: "So when Herodotus says outright in the tale of Darius' experiment . . . that all people adhere to their own customs, *nomos* is indeed king, he implies some alternative view – *nomos* as opposed to what? To emphasize *nomos* in this period in this way presupposes some controversy, some debate, some alternative. It may be that his insistence was directed at men who thought human culture was determined by environment rather than at thinkers like Hippias or Antiphon who embraced *physis* in a different sense (nature)."

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position on which right and wrong traditional practices can be assessed, and the results of Darius' experiment emphasize just this fact.[52] Second, the emic perspective acknowledges the fixity and integrity of cultural norms and traditions for a given society by focalizing the Greek and then Callatian perspectives on burial traditions. The reaction of the Callatians in particular, who practiced a Greek taboo – cannibalism – drives home the validity of the emic vantage point. Not unlike Plato's Protagoras, for whom whatever seems just and fine to each city is just and fine so long as it observes that customarily, the *Histories* reveals a willingness to attribute to a given culture its own ethical coherence.[53]

Returning to Cambyses, we can consider afresh the link between the king's madness and the recognition that all men hold their own *nomoi* as best. In confronting Egypt and its exceptionally myopic cultural practices as a Persian aggressor, Cambyses had already staged a cultural experiment similar to that of Darius. Unlike his successor, however, he did not reach the correct conclusion – a failure that is explained by the symptomatic laughter of madness. Taken as a whole, 3.38 affirms the impossibility of a single Archimedean vantage point from which to assess cultural norms. The influence of cultural relativism as a tool for understanding historical action beyond the confines of the Greek world is not, tellingly, met with an equal interest in that associated form of relativism, subjectivism. One might imagine a Protagorean subjectivist suggesting that Cambyses' reaction was "right for him." The *Histories* grants him no such scope, instead processing the narrative of his reign through the suffering of his victims. As the Pindaric citation stresses, it is communal *nomos*, not the individual, which is supreme. Each society is shaped by its own values, and these values are to be considered appropriate for it. On Humphreys' analysis, "the point would perhaps be, then, that keeping within the bounds of

[52] Baragwanath (2008), 116, with notes on Rood (2006), 298–300. For a different interpretation, see Provencal (2015), 51, who assumes that "the idiosyncratic irrationality of Cambyses' mockery of custom only serves to highlight the universal respect for *nomos* as sacrosanct, the universality of cultural absolutism signifying that *nomos* itself is divine." He cites as support Lateiner (1989), 141, who argues that some *nomoi* in Herodotus appear universal. Yet, where the Androphagoi, who are expressly said to have no *nomos*, fit into this interpretation is unclear. There is no evidence in the text, contra Provencal (2015), 52, that "*nomoi* are relative to and dependent upon *nomos* as a universal and divine principle." With Waters (1971), 99, "There is no instance of νόμος in the sense of overriding principle, a law of nature . . . or as the manifestation of divine control, a θεῖος νόμος . . . Herodotus does not elevate a personified or deified Nomos into a guiding principle".

[53] My position is close to that of de Romilly (1992), 112, "The conclusion that he drew from his discoveries was that one should always display tolerance."

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nomos is what matters, regardless of the variation of *nomoi* from one society to the next."[54] In fact, keeping within the bounds of *nomos* appears inevitable; barring madness, "*nomos* is king."[55]

It seems that the example of funerary cannibalism became a *topos* in philosophical treatises on relativism, as the author of the *Dissoi Logoi* makes precisely the same point, but uses the Massagetes as an example of the relativity of values:[56]

> Μασσαγέται δὲ τὼς γονέας κατακόψαντες κατέσθοντι, καὶ τάφος κάλλιστος δοκεῖ ἦμεν ἐν τοῖς τέκνοις τεθάφθαι· ἐν δὲ τᾷ Ἑλλάδι αἴ τις ταῦτα ποιήσαι, ἐξελαθεὶς ἐκ τῆς Ἑλλάδος κακῶς κα ἀποθάνοι ὡς αἰσχρὰ καὶ δεινὰ ποιέων. (2.14)
>
> The Massagetes cut their parents up and eat them, and the seemliest burial is thought by them to be if they are buried within their children; but in Greece if someone were to do these things he would be driven out of Greece and would die terribly as one doing shameful and awful deeds.

The neutrality with which the narrator presents the Callatian Indians' practice of ancestor-ingestion is a regular feature of Herodotus' ethnographic excurses, a fact that confirms his affinity for cultural relativism.[57] For example, in detailing the customs of the savage Taurians, who infamously practiced human sacrifice, Herodotus begins,

[54] Humphreys (1987), 214.

[55] Cf. Thomas (2017), 582, who contrasts Herodotus' "belief in the priority and significance of a society's own laws and customs" with Thucydides' willingness to witness their upheaval. The former Spartan king, Demaratus, echoes this sentiment in even stronger language at 7.104.4–5, where the Spartans have over them a δεσπότης νόμος; [Pl.] *Minos* 317c notes the power of "kingly" *nomos*: τὸ μὲν ὀρθὸν νόμος ἐστὶ βασιλικός, τὸ δὲ μὴ ὀρθὸν οὔ, ὃ δοκεῖ νόμος εἶναι τοῖς μὴ εἰδόσιν ("that which is right is the kingly *nomos*, not that which is not right, which seems to be a *nomos* to those who do not know"). Nestle (1908), 26, reads this as connected to sophistic teaching from Hippias; my courage fails. The equal validity of cultural practices is matched by the equal validity on wisdom concerning the divine, for which, Munson (2001), 164, who cites 2.3.2 "considering that all men know equally about these things" (νομίζων πάντας ἀνθρώπους ἴσον περὶ αὐτῶν ἐπίστασθαι).

[56] See pp. 198, 201. Cf. Nestle (1908), 36; also de Romilly (1992), 113, "the purpose of the author is no longer to preach tolerance. It is to show that there are no such things as objective justice or injustice." The *Dissoi Logoi* does not stress or exclude tolerance as a potential response to cultural relativism. The funerary ritual is recorded at Hdt. 1.126; for a discussion of funerary *nomoi*, see Munson (2001), 167–70. On funerary practices and *nomos*, cf. Pind. *Ol.* 8.78; Soph. *Aj.* 1130; *Ant.* 24, 519.

[57] Munson (2001), 163, notes that cultural relativism and ethical relativism are two separate philosophical concepts, offering monarchic abuse and an implicit disapproval of the oppression of free members of a society as examples of Herodotus' rejection of ethical relativism. Hartog (1988), 256, rightly comments on the neutral tone of Herodotus' voiceprint in his ethnographic narrative descriptions.

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> Of these people, the Taurians use the following *nomoi*. They sacrifice to the Maiden shipwrecked people and those of the Greeks whom they seize after putting out to sea, in such a way: they start the sacrifice by striking their head with a club. In fact, some say that they thrust the body down from the cliff (for the shrine is situated on a cliff face) and put their head on a spike; others agree about the head part, however they claim that the body is not thrust down from the cliff, but it is hidden in the earth. (4.103.1–2)

Herodotus' description sets aside revulsion in order to engage with the Taurians on their own terms. His often-dispassionate stance, married as it is to an antiquarian hunger for detail on the gory rite of human sacrifice, reveals no value judgment. Contrast the response of Iphigenia on the same practice in Euripides' tragedy, *Iphigenia Among the Taurians*:

> There is no way that Leto, wife of Zeus, | would have given birth to such stupidity. I | judge too that the feast of Tantalus with the gods | is a faithless tale – that they took pleasure in his son's flesh; | but I suppose that these here [the Taurians], because they are man-killers (ἀνθρωποκτόνους), | credit their baseness (τὸ φαῦλον) to the goddess. (386–90)[58]

Iphigenia upholds an objectivism whereby the goddess' norms are the same everywhere and interprets the Taurians as violating these in her name.

By contrast, Herodotus' impartiality gradually instills a hermeneutic stance of assessing each group on its own terms. Even in the rare instances in the text where the narrator explicitly makes a value judgment on *nomos*, this is couched in relative terms. In a discussion of Persian ethnography, for example, the narrator praises two Persian *nomoi* (1.137.1). As Rosaria Vignolo Munson has persuasively argued, these evaluations are best considered as instances of "opinion" rather than the results of an application of an objective standard, and she connects this praise to narratorial approval on limiting emotional excess.[59] Elsewhere, a *nomos* adopted from the Egyptians by Solon is said to be unequivocally "blameless" (2.177.2), as an explanation for its continued use. In the Babylonian ethnography, the "wisest" *nomos*, the marriage market, is part of a subjective judgment (1.196.1: κατὰ γνώμην τὴν ἡμετέρην, "in my opinion"). While a given society has more or less fine practices, these are not absolute, transcultural assessments.

In this last example, unmarried women are brought together and sold, beginning with the most beautiful. The least attractive are then given

[58] Cf. Eur. *Cyc.* 299–301.
[59] Munson (2001), 138–40; cf. too 88–100, 149–72; Apfel (2011), 194–6.

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dowries from the funds that have been collected from the wealthy individuals willing to buy their comely wives. This exchange of women and circulation of wealth attends to economic and social inequalities. We happen to know that an obscure philosopher, Phaleas of Chalcedon (believed to antedate Plato), agreed. Aristotle mentions that Phaleas supported the careful regulation of inequality to reduce party strife. He recommended that cities adopt a version of the marriage market – that is, to allow the rich to give dowries but not receive them and to allow the poor to accept but not give them (Arist. *Pol.* 1266b). It is possible that a similar interest in the promotion of equality and social cohesion may underlie Herodotus' judgment. It may also underpin his critique of Babylon's "most shameful custom" (1.199.1): mandatory, one-time temple sex work. In this ritual, beautiful women, we are told, can quickly acquit themselves; however, those less favored in appearance may remain waiting for years to complete their service, in a reversal of the equality of opportunity found in the marriage marketplace. Herodotus' judgments on *nomos*, positive or negative, are rare. The tantalizing connection between Herodotus' Babylon and Phaleas' political philosophical project expose another potential layer to interpreting these – as pointed interventions in debates on civic harmony.

To return to Cambyses, those interpreting the *logos* as ultimately advocating for tolerance are, on balance, correct.[60] But if this argument rejects cultural relativism as the logic behind tolerance, then on what account does tolerance become desirable? If there are absolutes in cultural practices, and if Herodotus might accept that there is an objective integrity to the practice of cremation, as an example, why would tolerance be the response to any behavior that departs from this, rather than education or compulsion? Alternatively, if the text advances an implicit position according to which human understanding is too limited to allow for confidence in conclusions about the integrity of a given norm, this also puts the external audience in the position of relativists, in the understanding that all customs are potentially valid, with no objective viewpoint to adjudicate.

One-Man Rule and Decoupling *Nomos* from *Dike*

On the strength of the juxtaposition of Cambyses' madness and the Greco-Callatian deference to tradition, Thomas concludes, "Herodotus respects

[60] For tolerance and relativism, see Appendix 1.

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nomoi whatever their provenance."[61] As is common to fifth-century thinkers, Herodotus does often ally *nomos* to its more abstract companion, justice (*dike*), a fact that goes some way to explaining the reverence that *nomos* commands.[62] The Persians "observe as customary" (1.133.1: νομίζουσι) the honoring of their birthday, and "deem it right" (δικαιεῦσι) to have a greater feast on this day. After Cambyses abuses the corpse of the Egyptian king Amasis, the narrator remarks:[63]

> For the Persians hold as customary (νομίζουσι) that fire is a god. Indeed, burning corpses is not at all a *nomos* for either [Persians or Egyptians]; in the case of the Persians, for the very reason that has been mentioned, since they say that it is not just (δίκαιον) to dispense (νέμειν) the corpse of a man to a god. (3.16.2–3)

In order to introduce a new *nomos*, the Persian jurisconsults first judge that it is "just" (3.31.4: δίκαια). A Spartan famed for his justice, Glaucus, when being asked for the return of a deposit, speciously says that he wishes to do "all that is just" (πᾶν τὸ δίκαιον) and then pledges to use Greek *nomoi* (6.86.β2). In the ominous moments just prior to Plataea, Mardonius refuses to wait for the appropriate Greek sacrifices to turn out positively and instead follows the Persian *nomos*, which does not require sacrifices before battle, "deeming it right" (9.42.1: δικαιεῦντος).

Yet this is not the entire story. In key passages, the apparent logic of 3.38 – that men respect *nomoi* no matter their provenance on the basis of their connection to a society's own justice – is complicated.[64] As we saw above, Persian despotism and imperial domination have the potential to threaten the initially powerful position that *nomos* holds in a society.[65]

[61] Thomas (2000), 133; cf. a similar statement in Herrmann (1967), 124, which contrasts Herodotus' reverence to Thucydides. Immerwahr (1966), 321, is more ambivalent, "while it is clear its effect is primarily in harmony with the world order, there are customs which have a destructive effect upon the peoples that hold them, and on other peoples as well."

[62] Stier (1928), 239, "für νόμος die δίκη synonym gebraucht wird" ("*dike* is used synonymously for *nomos*"), a fact he thinks is misunderstood by interpreters attempting to put Herodotus and sophistic thought in dialogue.

[63] On this passage, see Apfel (2011), 197–8.

[64] Ostwald (1969), 37, "the term [*nomos*] describes not a practice but a belief, opinion, a point of view, or an intellectual attitude, which starts out by being accepted without question by all members of a given group, but is attacked by intellectuals from the second half of the fifth century on as 'mere' conventional belief, foolishly embraced by the ignorant multitude but to be rejected in the light of truer values . . . the term retains its old signification of something regarded as valid by public opinion in general."

[65] In spite of the apparent strong prescriptive power of *nomoi* – which had been proof of the madness of Cambyses for transgressing them – individuals in the *Histories* regularly transgress *nomoi* or what is *nomima*, e.g., 1.9.1; 1.11.3; 1.61.1; 1.144.3; 4.76.1–80.5; 5.42.2; 7.136.2; 7.238.2. Baragwanath

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Cambyses, for example, invents ingenious transgressions of both Persian and Egyptian *nomoi*, and his actions are treated as unethical for much of the narrative.[66] However, his position as operating outside of Persian norms loses its force during the course of his reign, in a development that reflects powerfully on the *histor*'s place in the current philosophical debate on the relativity of values and justice.

Cambyses' madness manifests itself in a succession of murders that first take place against his family. He orders the death of his brother, Smerdis, and then his sister; in one variant, he even kills his unborn child.[67] The description of the murder of the king's sister-wife is of particular interest, as it includes, unlike the chronological progression of the death of Smerdis, a narratorial analepsis that nests an account of the king's constitutional position, which led to his marriage to his sister prior to the Egyptian campaign.[68] The analepsis is structured around the chronic inability of the ruler to ally himself to Persian *nomos*, but his status as a transgressor of *nomos* is not upheld.[69]

> He married her in this way. For the Persians were not at all previously accustomed to cohabit with their sisters (οὐδαμῶς γὰρ ἐώθεσαν πρότερον τῇσι ἀδελφεῇσι συνοικέειν Πέρσαι). Cambyses grew lustful for one of his sisters and next, wishing to marry her, since he was contriving to do what was not customary (οὐκ ἐωθότα ἐπενόεε ποιήσειν), he summoned those called royal judges and asked them if there was some *nomos* bidding one who wished to cohabit with his sister (εἴ τις ἐστὶ κελεύων νόμος τὸν βουλόμενον ἀδελφεῇ συνοικέειν). The royal judges are select Persian men who serve up until they die or something unjust is discovered about them. These men decide lawsuits for the Persians and they are expounders of the ancestral laws and everything is referred to them. So then, when Cambyses asked them, they gave him a just (δίκαια) and safe answer, saying that they

(2008), 120, rightly finds that Herodotus "seems more interested in exploring the extent to which *nomoi* do not determine human behaviour."

[66] Despots present an acute threat to *nomos*, e.g., Lateiner (1989), 155.

[67] At 3.32.1 the two accounts of the death of Cambyses' sister-wife – and also of the death of Smerdis – are called διξὸς λόγος, corresponding nicely to the Protagorean "two-fold *logos*." Flower (2006), 279–80, notes the historical improbability of the narrative of Cambyses. For Egypt's acceptance of Cambyses as legitimate pharaoh, see Wasmuth (2021); for an argument on the fictionality of the Apis narrative, see Konstantakos (2016); on the madness of Cambyses as based on an Egyptian legend, see Cruz-Urbibe (2003). For a positive interpretation of his treatment of Egyptian temples, see Agut-Labordère (2005). Ruzicka (2012), 18: "much evidence of various kinds … points instead to Cambyses as concerned with reconciling Egyptians to Persian domination by maintaining and participating in Egyptian practices."

[68] Parallel accounts are found in Ctesias, see *FGrH* 688 F 13 and Strabo 17.1.5. According to Asheri-Lloyd-Corcella 3.31.2, sibling marriage was a common practice in Persia in Herodotus' own time.

[69] For this passage, see Redfield (1985), 117.

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> could not discover any *nomos* which orders a brother to cohabit with his sister; however, they had discovered another *nomos*, that it is permitted for the king of the Persians to do whatever he wishes (φάμενοι νόμον οὐδένα ἐξευρίσκειν ὃς κελεύει ἀδελφεῇ συνοικέειν ἀδελφεόν, ἄλλον μέντοι ἐξευρηκέναι νόμον, τῷ βασιλεύοντι Περσέων ἐξεῖναι ποιέειν τὸ ἂν βούληται). In this way they did not break the *nomos* (οὕτω οὔτε τὸν νόμον ἔλυσαν). Since they were afraid of Cambyses, they discovered in addition another *nomos* as an ally to one wanting to marry his sisters, in order that they themselves not die by preserving the *nomos* (ἵνα [τε] μὴ αὐτοὶ ἀπόλωνται τὸν νόμον περιστέλλοντες, παρεξεῦρον ἄλλον νόμον σύμμαχον τῷ θέλοντι γαμέειν ἀδελφεάς). (3.31.2–5)

Incest is a particularly powerful expression of alienation from norms, as this practice provides the foundation for society's categorization of identity and difference.[70] The contravention of this taboo serves to illustrate Cambyses' rivalry with the divine, his acute social estrangement, and his obsession with the self. Motivated by the fact that his desire to marry his sister is "not customary" (οὐκ ἐωθότα), Cambyses approaches Persia's specialized jurisconsults to find a constitutional loophole.[71] Herodotus narrates an additional complication: Persia's legal experts cannot be discovered adjusting *nomos* without being disbarred or worse. This presents a problem, as Persia does not allow incestuous marriages, but neither could the legal experts expect to avoid a gruesome end by upholding Persian *nomos* if they rejected Cambyses' request.[72] Resolution arises from their "discovery" or "invention" (ἐξευρηκέναι) of another *nomos*: "to the ruler of the Persians it is permitted to do whatever he wishes." Cambyses enters seeking a *nomos* to allow one to marry his sister and leaves with a much more comprehensive mandate – whatever the actions of the king, they are embraced under a sweeping law that sanctions them. This *nomos* resolves the Persian jurisconsults' legal paradox, while very carefully avoiding the dismantling of Persian *nomos* against incest (οὔτε τὸν νόμον ἔλυσαν, "nor did they rescind the law"). Cambyses no longer conflicts with *nomos*, given the identification of the ruler with what is custom, law, and tradition, and this results in an uneasy compromise between the destruction of *nomos* and justification of behavior that is contrary to it.

[70] That Herodotus' Persians did not practice incest earlier is clear from 3.31.2. Herodotus is careful to note that she was his sister from both parents 3.31.1. The detail is also found in Ar. *Nub.* 1372, because in Athens, "marriage between children of the same father but different mothers was permitted by law," see Dover (1968) ad loc. For an overview of ideas about incest in ancient Greece, see Wilgaux (2011), 217–30.

[71] Bucci (1975). [72] See the punishment of Sisamnes, 5.25.

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The rare collocation ἐξευρηκέναι νόμον (*exeurekenai nomon*) itself may point to this tension. On its own, ἐξευρίσκω refers to "finding out" and "discovering" something amidst a given set of options.[73] In Aristophanes' *Clouds*, the Better Argument asks the Worse how it can possibly defeat a superior position, to which the latter responds, "by finding out novel propositions" (*Nub.* 896: γνώμας καινὰς ἐξευρίσκων). It can also be applied to *nomos*, however, as in Antiphon's *On the Murder of Herodes*. The defendant, Euxitheus, accuses the prosecution of presenting their case against him on the wrong charge in the wrong court and reproaches his prosecutor for "discovering laws" to suit himself, αὐτὸς σεαυτῷ νόμους ἐξευρών (12). This paradoxical phrasing uses "discovery" not in connection with preexisting laws, as the term would normally imply, but with the innovation of laws "for yourself." The notion of individualistic *nomoi* disrupts their usual association with community values. Instead, laws are discovered for the individual. This kind of almost contradictory usage finds a parallel in the English phrase, "being a law unto oneself."[74] In the *Histories*, the terms are also found together in the Candaules-Gyges *logos* in the first transgression of *nomos*, when Candaules suggests that Gyges view his wife naked. Gyges protests, "long ago noble things have been discovered by men . . . and I beg you not to enjoin what is contrary to *nomos*" (1.8.4: πάλαι δὲ τὰ καλὰ ἀνθρώποισι ἐξεύρηται . . . καὶ σέο δέομαι μὴ δέεσθαι ἀνόμων).[75] The ancients' dictum to "look to one's own" is a discovery that is here set in stark contrast with the immoral proposal of Candaules. Similarly, when the Babylonians discover a new *nomos* for liquidity, the narrator glosses it as "lately they have found some other thing: everyone destitute of livelihood prostitutes his daughters" (1.196.5: ἄλλο δέ τι ἐξευρήκασι νεωστὶ . . . πᾶς τις τοῦ δήμου βίου σπανίζων καταπορνεύει τὰ θήλεα τέκνα). These passages provide additional context for the actions of the Persian jurisconsults, who are "finding out a *nomos*," that is innovating and establishing a practice as a custom by fiat. This process undercuts the temporality of custom as something established

[73] Cf. Powell s.v. ἐξευρίσκω, "seek out," "find out," and by extension, "invent."

[74] There need not be a negative association between "discovery" and *nomos*, however, cf. Soph. *Trach.* 1174–8, where Heracles bids his son to discover the finest *nomos*, obedience to a parent (νόμον | κάλλιστον ἐξευρόντα, πειθαρχεῖν πατρί). [Pl.] *Minos* 315a–d, defines *nomos* as the "discovery," ἐξεύρεσις, of "is."

[75] Similarly, Evans (1965), 145, suggests that most *nomoi* have their origins in discoveries made by men of old, pointing to 1.8, "they are the product of ancestral wisdom, discovered apparently by experience and not by divine revelation."

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communally and legitimated by time.[76] It is clear that in composing this piece, which occurs, importantly, prior to the invasion of Egypt, Herodotus retrojects the rupture of *nomos* and popular morality into the earliest moments of the reign of Cambyses.[77]

The origins of *nomos* are recorded elsewhere in the *Histories*, and they follow a clear pattern. When the narrative presents the audience with the establishment of a new *nomos*, these are authorized *collectively*. After the Argive defeat at Thyrea, the Argives as a people (Ἀργεῖοι) establish two *nomoi*: to keep their hair shorn and to forbid women to wear gold prior to retaking Thyrea (1.82.7).[78] Simultaneously, the victors in this battle, the Lacedaemonians (Λακεδαιμόνιοι), establish a counter-*nomos* to grow their hair (1.82.8). In a similar manner, the Argives and Aeginetans make a custom (5.88.2: ἔτι τόδε ποιῆσαι νόμον εἶναι παρὰ σφίσι ἑκατέροισι) of wearing brooches twice as large as they had previously, in celebration of their victory against the Athenians and in support of the Athenian women who killed, with their dress pins, the single soldier who had survived the Argive-Aeginetan slaughter. They also collectively observe an embargo against Athenian goods and begin a custom (5.88.2: νόμον) of pouring libations only from their own local wares. The women of Caria impose a *nomos* (1.146.3: νόμον) that forbids their eating with their Ionian husbands. This is in recompense for their husbands' murdering the Carian women's parents, prior husbands, and children.[79] As a general rule, then, the introduction and maintenance of *nomos* is a socially constituted phenomenon. Lawgivers also pass legislation, which might initially appear to ally *nomos* to the individual; however, these figures are in fact presented as conduits of the people and as vehicles for their communal values. Solon, for example, enacts *nomoi* for the Athenians; in this case, the *histor* insists on the importance of the populace in introducing and authorizing his action. First, the "Athenians" en masse request new *nomoi* from Solon (1.29.1: ὃς Ἀθηναίοισι νόμους κελεύσασι ποιήσας, "he had made laws for

[76] This may not suggest that Herodotus disapproves of *nomos* that is discovered – on the contrary, it is clear from Gyges' words that *nomoi* are first considered "discoveries"; what I suggest is that the Persian "discovery" of a *nomos* that allows the ruler to act without a check is a *nomos* that strains the logic of the concept itself. For a discussion of this passage and its relationship to Herodotus' ethnography, see Calame (1986), 82–3.

[77] This passage complicates the assertion of Herrmann (1967), 119 n. 12, "Die Frage der Gerechtigkeit der Nomoi wird nicht erhoben" ("The question of the justice of *nomoi* is not raised.").

[78] Contra Humphreys (1987), 217, *nomos* does not have to not easily change; rather, it must be endorsed by a community. The Argives clearly want to abandon this *nomos* as soon as possible.

[79] Other examples of group action creating *nomoi* for posterity include 2.35.2; 3.48.3; for a smaller group enacting a *nomos*, see 2.147.3–4.

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the Athenians who ordered it"), and then the people as a whole agree to obey his *nomoi* "with powerful oaths" (1.29.2: ὁρκίοισι γὰρ μεγάλοισι). The complicity of the collective is obvious and should not be glossed over. So too, the narrative stresses the collective endorsement of Lycurgus as a lawgiver: after his death, the Spartans as a body establish a temple and cultic worship for him (1.65.5).[80] Famously, "the Persians especially admit foreign *nomaia*" (1.135), and the Persian collective is stressed throughout this passage. The portrait that coalesces from the text is that *nomoi* are socially constructed practices, a set of parameters that establish justice and injustice within a given group.

Returning to Cambyses, the *nomos* justifying his incest is in tension with the authorized body of *nomoi* that the Persian jurisconsults are meant to protect. Yet, if we follow the *communis opinio*, "Herodotus never questions the obligations that *nomos* imposes."[81] Indeed, the immediately succeeding episodes on the nomological marketplace and the experiment of Darius would apparently confirm this, were it not for the complications presented by the Persian legal experts' constitutional ruling on Cambyses. This ruling allows the despot to be reintegrated into the fabric of Persian normative behavior, as his actions are now in line with legality and justice, although they contravene what is popularly moral. In crafting this passage, Herodotus moves beyond the position that Cambyses attacks *nomos* and begins to engage with contemporary debates on *nomos* and the philosophical implications of relativism.[82]

[80] At 2.177.2, Amasis establishes the *nomos* of reporting income, a "blameless *nomos*" that Solon brings to Athens, and which "those Athenians continue up to this point to observe as blameless" (τῷ ἐκεῖνοι ἐς <τόδε> αἰεὶ χρέωνται, ἐόντι ἀμώμῳ), again stressing the importance of the body of the people in upholding law, though in this case an individual introduces the *nomos*. There are also cases in which the support of the people is not overtly noted, e.g., 2.136.2, although these are more rare. The divine do not give *nomoi* in the *Histories*, *pace* Evans (1965), 147.

[81] Ostwald (1969), 255, as so often, in contradistinction to Thucydides. This appears to be valid of, e.g., Democritus DK 68 B 248: ὁ νόμος βούλεται μὲν εὐεργετεῖν βίον ἀνθρώπων· δύναται δέ, ὅταν αὐτοὶ βούλωνται πάσχειν εὖ· τοῖσι γὰρ πειθομένοισι τὴν ἰδίην ἀρετὴν ἐνδείκνυται. ("*Nomos* wishes to do a service for men's lives; and it has the power to do so, when they themselves wish to fare well. For to those who are obedient to *nomos* it displays its unique virtue.")

[82] Munson (2001), 171, suggests that for Cambyses "the realization that different peoples have different *nomoi* with roughly the same validity leads to denying the validity of them at all." However, Cambyses represents a more complex response to *nomos* – he attempts to ally himself to it with his marriage, and he never clearly recognizes the validity of *nomos* beyond his own warped conception of it. Rather than suggesting that he is an immoralist, like Callicles – who rejects *nomos*, as Munson (2001), 173 n. 100 – I interpret him as closely allied to a Pheidippides figure, who does not simply want to disregard *nomos* but to change the underlying referents of *nomos* to reflect his own abnormal vision of it.

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Observe first that Cambyses' constitutional position is to serve as a kind of criterion of *nomos*.[83] This identification is clearly participating in a contemporary political-philosophical discussion on the problematic relationship of the tyrant to *nomos*. In Euripides' *Suppliants*, the Athenian king Theseus gives a defense of democracy that criticizes tyranny as allowing one man to monopolize *nomos*: "One man rules, having acquired *nomos* for himself: and there is no longer equality" (431–2: κρατεῖ δ' εἷς τὸν νόμον κεκτημένος | αὐτὸς παρ' αὑτῷ: καὶ τόδ' οὐκέτ' ἔστ' ἴσον).[84] Theseus prefaces this with "because first of all there are no common *nomoi*" (430–1: ὅπου τὸ μὲν πρώτιστον οὐκ εἰσὶν νόμοι | κοινοί). Theseus' rejection of this constitutional system rests on the fact that it eliminates equality (ἴσον), the popular consensus that forms the foundation of *nomos* as it is so often conceived. In a tyranny, the source of *nomos* resides in the figure of the tyrant himself, which fosters arbitrariness in the application and administration of justice. Equality signifies, by contrast, the universal access that citizens have to the law and to the stability of its referents.[85]

The playwright's fragmentary *Antigone* also fulminates against the identity of the ruler with *nomos*: "It is not fitting to rule, nor ought one be a tyrant without *nomoi*" (*TrGF* F 172.1–2 Kannicht: οὔτ' εἰκὸς ἄρχειν οὔτ' ἐχρῆν ἄνευ νόμων | τύραννον εἶναι). It is clear that this became something of a commonplace, as in the *Prometheus Bound*, the chorus accuses Zeus of taking possession of *justice* for himself, οἶδ' ὅτι τραχὺς καὶ παρ' ἑαυτῷ | τὸ δίκαιον ἔχων Ζεύς (186–7: "I know that Zeus is harsh, making justice his own prerogative"), in a jab at his tyrannical behavior. Private law recurs as a characterization of Zeus' rule, "These are the miseries that come from Zeus' governing with his private *nomoi*; he displays an arrogant temper to the prior divinities" (402–5: ἀμέγαρτα γὰρ τάδε Ζεὺς | ἰδίοις νόμοις κρατύνων | ὑπερήφανον θεοῖς τοῖς | πάρος ἐνδείκνυσιν αἰχμάν), and this cements the status of the new sovereign as a *tyrannos* rather than a

[83] In Presocratic circles, the relationship between *nomos* and justice was emerging as controversial; Antiphon B 44 F A col. I 6–11: Δικα[ιο]σύνη πάντα <τὰ> τῆς πό[λεω]ς νόμιμα ἐν ᾗ ἂν πολι[τεύ]ηταί τις μὴ [παρ]αβαίνειν ("Justice is one not transgressing all the *nomima* of the polis in which one happens to be a citizen"). The definition of justice as not transgressing the laws of one's society was a common one, and here Antiphon uses it to expose the weakness of *nomos* as a standard for behavior.

[84] See Stier (1928), 244.

[85] See Eur. *Supp.* 433–7, for equality's ability to level the playing field in the contest for justice between the wealthy and the poor.

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basileus.[86] Again, the source of *nomos* is arrogated by the individual ruler and critiqued.

That Herodotus styles Cambyses' constitutional position on the model of the tyrant comes as no surprise; however, the choice to do so through a justification of incest is provocative. Recall that Pheidippides, in his artful display of New Learning, scandalized his father by performing Euripides' famous anthem to incest in the *Aeolus*.[87] As I noted above, in this tragedy the protagonist, Macareus, infamously advocated incest, which resulted in the deaths of his sister and their unborn child[88] – a request that likely included the oft-parodied line, "what is shameful, if it does not seem so to those practicing it" (F 19: τί δ' αἰσχρὸν ἦν μὴ τοῖσι χρωμένοις δοκῇ;). In the *Frogs*, Aeschylus repeatedly portrays this as shocking and maligns Euripides for introducing incest into the art of tragedy (850: γάμους δ' ἀνοσίους ἐσφέρων ἐς τὴν τέχνην).[89] Pheidippides' decision to sing it suggests that this was thematically associated with the philosophical tradition of the time, and it must be an attack on popular morality. Evidence for relativizing incest also comes from the *Dissoi Logoi*. There, the philosopher argues for the relativity of values on the grounds that Persian men practice incest with their daughters, mothers, and sisters.[90] This is contrasted with the practices of the Greeks, who find these actions morally reprehensible and lawless, αἰσχρὰ καὶ παράνομα (*aischra kai paranoma*).

It is clear that incest was a contested index in the debate on cultural relativism from the supporters of objective ethical norms as well. Opponents of relativism deployed it as an instance of exactly the opposite view, pointing to the *absence* of incest in human societies as an indication of universal *nomoi*. Xenophon recounts a dialogue between Socrates and Hippias on the definition of *nomos*, where Socrates' positive answer holds

[86] Cf. [Aesch.] *PV* 149–51: "For new steersmen hold power on Olympus and with laws that are new Zeus wields power unlawfully; he is now annihilating those who had strength before." See also the chorus at 149–50. Ostwald (1969), 44, "what is regarded as valid and binding under the dispensation of Zeus, the Oceanids seem to say, is in fact something unprecedented and idiosyncratic, enacted without the consent of the governed." Cf. Soph. *Ant*. 821, where the Chorus describes Antigone negatively as αὐτόνομος. For a *community's* positive ἰδίοι νόμοι, Pl. *Leg*. 681b. Ferrill (1987), challenges the notion that Herodotus used the two terms, *tyrannos* and *basileus*, interchangeably, contra Waters (1971), 6.

[87] Pütz (2007), 76.

[88] According to the Egyptian informants on her death, 3.32.4–33.1, Cambyses leaped on top of his sister-wife, killing her and their unborn child.

[89] Cf. also 1081: καὶ μειγνυμένας τοῖσιν ἀδελφοῖς ("and having sex with their brothers").

[90] *Dissoi Logoi* 2.15; cf. pp. 198–9. The custom is in fact expressly forbidden for the Persians in the *Histories* prior to Cambyses. For the Persians and the tradition of incest, cf. Xanthos of Lydia *FGrH* 765 F 31; Eur. *Andr*. 173–7 (on incest as a "barbarian" custom); Str. 4.5.4 and 15.3.20; Plut. *Artax*. 23.2–4; Tert. *Apol*. 9.16; Ath. *Deip*. 5.220c-d.

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that *nomos* is (1) whatever is legal in a given city but that (2) universal unwritten *nomoi* also exist, mandating, for example, fear of the gods, requital of benefits, and, suggestively, prohibitions against incest.[91] The historical Hippias was well aware of the diversity of *nomoi*, and thus Xenophon's incarnation of the philosopher fittingly draws attention to the fact that this is not a divine *nomos*, because it is transgressed.[92] This leads Socrates to counter that natural punishments follow inevitably from the transgression of divine *nomoi*; for example, children born from incestuous couplings are unhealthy. The Athenian Stranger in Plato's *Laws* makes an identical statement on the objectivity of morality regarding incest, remarking that in all serious tragedy, "when they lead in the Thyesteses or some Oedipuses or Macareuses having intercourse in secret with their sisters, are they not seen as willingly affixing the penalty of death upon themselves as a judgment for their sins?"[93] Although in Herodotus' own time Persians practiced such intermarriage, historicizing this phenomenon in the reign of Cambyses allows the audience of the *Histories* to view its origins as outside of Persian custom and tradition and to assess Cambyses as a "Macareus."

In the context of the discussion sketched above, it is perhaps intelligible that Herodotus crafts the despot Cambyses along lines that trace questions of incest and then segues into a discussion on the relativity of values. By making Cambyses the arbiter of *nomos*, the *Histories* dramatizes the fraying relationship between *nomos*, popular morality, and justice in Persia, where subjectivism – or the notion that what seems right to the individual is right, independent of societal norms – reigns in the form of the Great

[91] 4.4.20: οὐκοῦν καὶ μήτε γονέας παισὶ μίγνυσθαι μήτε παῖδας γονεῦσιν ("and that parents not have sex with their children, nor children with their parents").

[92] 4.4.21: ὅτι, ἔφη, αἰσθάνομαί τινας παραβαίνοντας αὐτόν ("because," he said, "I perceive that some transgress it"). Nestle (1908), 25, rightly sees the connection between 3.31 and this passage in the *Memorabilia*, though his judgment on Xenophon is unnecessarily harsh: "Xenophon . . . leider mit sehr geringem Verständnis für die darin behandelte Frage wiedergegeben hat." ("Xenophon has, unfortunately, described the question treated therein with very little understanding.") Cf. Xen. *Cyr.* 5.1.10, where fear and *nomos* prevent incest: ἐθελούσιον γάρ, ἔφη, ἐστί, καὶ ἐρᾷ ἕκαστος ὧν ἂν βούληται: αὐτίκ', ἔφη, οὐκ ἐρᾷ ἀδελφὸς ἀδελφῆς, ἄλλος δὲ ταύτης, οὐδὲ πατὴρ θυγατρός, ἄλλος δὲ ταύτης: καὶ γὰρ φόβος καὶ νόμος ἱκανὸς ἔρωτα κωλύειν ("'For it is voluntary,' he said, 'and each one desires whom he wishes; a brother does not desire his sister, but another desires her; nor does a father desire his daughter, but another desires her. For fear and a sufficiently strong *nomos* prevent this desire.'"). The same sentiment is found in Pl. *Leg.* 8.838a-b. At Eur. *Her.* 1314–17, Theseus explains that even the divine slip into error and that incest – against *nomos* – is one of the ways that this occurs; finally, the author of the Derveni papyrus makes an elaborate case for excusing Zeus' incest at col. 26.

[93] *Leg.* 838c: ὅταν ἢ Θυέστας ἢ τινας Οἰδίποδας εἰσάγωσιν, ἢ Μακαρέας τινὰς ἀδελφαῖς μειχθέντας λαθραίως, ὀφθέντας δὲ ἑτοίμως θάνατον αὑτοῖς ἐπιτιθέντας δίκην τῆς ἁμαρτίας;

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King.[94] The particular focus on incest as *nomos*, which is immediately followed by a mandate of cultural relativism, raises the question: does *nomos* remain "king of all" in the context of the perversion of popular morality? The epitaph on Cambyses' madness suggests otherwise. The *Histories* continually represents the actions of the ruler as an assault, rather than jarringly integrating him into the frame of tradition, custom, and law, as the Persian jurisconsults do. Accordingly, in the process of an endorsement of cultural relativism, the *Histories* subtly critiques Persian subjectivism. The narrative maintains the importance of the social body as the arbiter of *nomos*, even in a society dominated by the individual.

The interpretation that Cambyses exemplifies the tension in *nomos* and popular morality finds additional support in the context of Herodotus' quotation of Pindar, which unites two previously opposed elements of the narrative, νόμος (*nomos*) and βασιλεύς (*basileus*).[95] The gnomic statement from the premier fifth-century melic poet is often thought to confer weight on the judgment that Cambyses was mad due to the universal human practice of considering one's own *nomoi* just. Yet, Herodotus' inclusion of the verse is not simply ornamental; on the contrary, read in light of what remains of Pindar's F 169a, it reveals a deeper engagement with Pindaric poetics.[96]

What may initially appear a gnomic statement in the *Histories* is revealed as quite a novel thesis in Pindar: *Nomos*, ruler of all, governs the following paradoxical phrase, ἄγει δικαιῶν τὸ βιαιότατον | ὑπερτάτᾳ χειρί, "*Nomos* leads, deeming just what is most violent with the highest hand." Here, *nomos* is metaphorically represented as a monarch ruling with the utmost power and deeming what is the pitch of violence just. *Nomos* as monarchic is a vivid and astonishing image. Fifth-century political slogans in both aristocracies and democracies touted *nomos* as the opposition to one-man

[94] Lateiner (1989), 153, "More unsettling than Persian disregard of reason and justice are the frightening caricatures of justice that the kings perpetrate." For instances of Persian "justice," see 154. Benardete (1969), 4–6, anticipates this argument, noting that the Persian king's attempts at balance create a mockery of *dike*.

[95] For Herodotus' engagement with this quote, see Kingsley (2018).

[96] Schröder (1917), 199, is classic: "Man darf vielleicht daraus schließen, daß auch Herodot das Wort schon als ein 'geflügeltes' zitiert, ohne sich das Gedicht, das ihm ja noch vollständig vorlag, durchzulesen." ("One can perhaps conclude from this that Herodotus has also cited this as a 'winged' word, without reading the entire poem, which was still completely available to him.") More recent is West (2004), 84; (2007), 114. Its afterlife is very long, but important are Pl. *Gorg.* 484b4; *Prt.* 337d; *Leg.* 690b–c, 714e–15a, 889e–90a; Ar. *Rh.* 1406a; Plut. *Mor.* 780c7; Plut. *Vit. Demetr.* 42.8.3; Dio Chrys. *Or.* 75,2; Ael. Arist. *Against Plato, In Defence of Rhetoric* 45.52–3 Dindorf; Celsus *True Word* 5.34.40; Clem. Al. *Strom.* 1.29.181.4.

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rule.[97] Their ambiguous coalition in Pindar manifests in a further paradox, in that its actions result in "justifying what is most violent," δικαιῶν τὸ βιαιότατον.[98] The tension between the two concepts – justice and violence – is an obvious and disturbing one. Pindar supports this proposition with a proof, τεκμαίρομαι (*tekmairomai*), "I cite as evidence," and the rest of the extant song relates Heracles' violent theft of the cattle of Geryon and, then in greater detail, his seizure of the man-eating horses of the Thracian king Diomedes.[99] In each instance, Heracles' actions are charged in ethically negative ways: the theft of the cattle is explicitly ἀπριάτας, "without purchase money," a condemnable act.[100] Diomedes' struggle against Heracles is carefully qualified as one of honorable opposition, οὐ κό]ρῳ ἀλλ' ἀρετᾷ ("not with insolence, but with virtue"), ruling out the potential traditional mythographic reading that has Heracles justly punish Diomedes. The scholiast explains, "Not with *hybris*, but virtue. For not disregarding one's possessions is the act of a brave man, not of a violent one. And Heracles was unjust to take (them) away."[101] Heracles is poised in opposition to the monarch; his entrance is a violent intrusion, a "path of force in the night" (ν]υκτὶ βίας ὁδόν). It is clear that he has thrown one of the horses' grooms into the stall from the sound of crunching bones, a grim presage of the fate that awaits Diomedes according to tradition. While in another variant Diomedes was killed for feeding men to his horses, in this vignette it is Heracles who perpetrates the injustice.[102] Finally, the remainder of what is intelligible recounts Heracles' theft of the mares and completion of his labor. There is a clear logic to fragment 169a as we have it: Pindar opposes a violent Heracles to Geryon and then

[97] Eur. *Supp*. 429–34. See Stier (1928), 243f.; Giorgini (1993), 33; McGlew (1993), 86.

[98] Schröder (1917), 196, "rechtfertigend das Gewalttätigste" ("justifying the most violent act"); Bowra (1964), 75, "rendering just"; Ostwald (1965), 117, "brings on . . . what is most violent and makes it just"; Galinksy (1972), 34, "chastising," "bringing to justice." While Pavese (1968), 57, initially found that "'to justify' is patently impossible," at (1993), 146, he agrees with the *communis opinio*, for which see Lloyd-Jones (1972), 49, "δικαιοῦν is a factitive; its form suggests that it means 'makes just.'"

[99] For parallels of Heracles as violent and just, cf. Pavese (1993), 146, who notes *Hymn*. *Hom. Heracles* 6 and Peisandros, *Herakleia*, 10B. In early epic, questions of justice and injustice quietly operate in the background and problematize the heroism of Heracles, cf. Hom. *Il*. 5.403–4; *Od*. 11.565–627, 21.22–38. For a genealogy of Heracles' actions, see Amphitryon at Hes. [*Sc*.] 11–12, 82. Antecedent and presumably important for Pindar is Stesichorus' negative portrait of Heracles and heroizing of Geryon in the fragmentary *Geryoneis*, cf. F 12 col. I 7–8, II 6–7.

[100] LSJ[9] s.v. ἀπριάτην. Contrast Aesch. *Herakleidai* F 74.5–6, where Heracles travels to take the cattle of *unjust* herdsmen (βοτῆράς τ' ἀδίκους κτείνας) and from the triple-bodied Geryon.

[101] Σ line 10 (suppl. Lobel): οὐκ ἐπὶ ὕβρει, ἀλλ' ἀρετῆς ἕνεκα. τὸ γὰρ [τὰ ἑαυτοῦ μὴ προ]ίεσθαι ἀνδρείου (ἐστίν) [] ἀλλ' οὐχ ὑβριστ[οῦ. Ἡρα]κλῆς δ(ὲ) ἠδ[ί]κει [ἀφελό]μενος.

[102] For the death of the grooms, Apollod. *Bibl. Epit*. 2.5.8; Quint. Smyrn. 6.270–7; Philostr. *Imag*. 2.25.

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Diomedes and, in doing so, forcible seizure to valiant opposition. The initial injustice of Heracles is amply narrated; its justification, if it ever existed, where a monarchic *Nomos* sanctified Heracles, has been lost. Kevin Crotty well observes of Pindar's practice here that "rather than correct tradition, to bring it into line with the customary distinctions of moral categories, he reflects rather on the power of *nomos* to make men hold contradictory beliefs, so that they revere what they condemn and condemn behavior (Diomedes') which they elsewhere commend."[103]

The nomological marketplace immediately precedes the fragment of Pindar in the *Histories*, and thus it is of interest that it is reminiscent of another fragment of Pindar: ἄλλα δ' ἄλλοισιν νόμιμα, σφετέραν δ' αἰνεῖ δίκαν ἕκαστος (215a).[104] Without additional context, it is difficult to draw too many conclusions; however, it is strikingly similar in content to Herodotus' relativizing statements here on the variability of *nomos* and its validity for each social body. Herodotus uses relativism as a foil for explaining the abnormality of Cambyses – this is a king who defies human nature.[105] Noteworthy too is Herodotus' ἄλλοισι τεκμηρίοισι ("among other proofs"), which transitions into a historical exemplum from the reign of Darius. This evokes Pindar's own τεκμαίρομαι | ἔργοισιν ("I cite as evidence | the deeds") in 169a.4–5, introducing as it does Heracles' injustice against Geryon and Diomedes.[106]

If we ignore the Pindaric hypotext, the quotation could be interpreted as a gnomic statement illustrating the easy resistance of *nomos* to hegemonic force. That is, Herodotus would juxtapose kingship and *nomos* in the final analysis to illustrate the triumph of the latter over the former and to hint at the reestablishment of normativity following the reign of Cambyses. Yet what is distinctive to Cambyses' rule is his ability to justify his attacks on popular morality as instantiations of *nomos*. In this sense, the reference to Pindar activates a network of meanings – on the disturbing and ambiguous power of *nomos* as a force in the justification of violence.

[103] Crotty (1982), 106.

[104] Rutherford (2001), 338, translates: "Different people have different customs and each man praises his own justice"; also found in Σ in Hom. *Il.* 2.400; Artem. *Oneir.* 4.2, (p. 243 Pack). Noted by Schröder (1917), 199; followed by Stier (1928), 228, 239; and Gigante (1956), 112, who connects it to Aesch. *Sept.* 1070–1: καὶ πόλις ἄλλως | ἄλλοτ' ἐπαινεῖ τὰ δίκαια. ("the polis praises different things at different times as just") Cf. also Pl. *Tht.* 168c.

[105] For which, see Otanes at 3.80.4: τὸ δὲ ὑπεναντίον τούτου ἐς τοὺς πολιήτας πέφυκε ("but he is by nature the opposite of this towards his citizens").

[106] Similarly, Gigante (1956), 113, observes: "è inevitabile pensare che Erodoto abbia non soltanto data la sua interpretazione, ma anche che l'abbia contrapposta al taciuto contesto pindarico." ("One inevitably thinks that Herodotus not only offered his own interpretation, but also contrasted it with the unspoken Pindaric context.").

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The historical narrative of one-man rule in Persia continues to develop the dynamic whereby *nomos* and its relationship to popular morality are called into question. Following the death of Cambyses and the conspiracy of the Magi, the narrative turns to the famous Constitutional Debate, during which three speakers in succession address the merits and defects of democracy, oligarchy, and monarchy. In doing so, they present a fifth-century political-philosophical *tour de force*.[107] The first speaker, Otanes, speaks in support of democracy, specifically calling attention to one-man rule as a constitutional form that outrages Persian tradition. As has been noted, his encomium of democracy takes the form of a postmortem on the reign of Cambyses.[108] Otanes' strongest argument for the move to a participatory form of government is his assertion that the institution of monarchy has inherent deficiencies:

> κῶς δ' ἂν εἴη χρῆμα κατηρτημένον μουναρχίη, τῇ ἔξεστι ἀνευθύνῳ ποιέειν τὰ βούλεται; καὶ γὰρ ἂν τὸν ἄριστον ἀνδρῶν πάντων στάντα ἐς ταύτην τὴν ἀρχὴν ἐκτὸς τῶν ἐωθότων νοημάτων στήσειε. (3.80.3)
>
> How can monarchy be a properly regulated thing in a system where it is permitted for the monarch to do what he wishes with no accounting for it? For even if one were to set the best of all men in this constitutional system, still it would put him outside of all customary thoughts.

Otanes identifies a structural error within monarchy and in doing so obliquely critiques the verdict of the legal exegetes on royal *nomos*, that "the king has the right to do whatever he wishes" (τῷ βασιλεύοντι Περσέων ἐξεῖναι ποιέειν τὸ ἂν βούληται), in the same language, τῇ ἔξεστι ἀνευθύνῳ ποιέειν τὰ βούλεται ("where it is permitted for the monarch to do what he wishes with no accounting for it"). His critical reading of this *nomos* is evident through the addition of ἀνεύθυνος (*aneuthynos*), literally, "not capable of being straightened";[109] it is a democratic *terminus technicus* associated with a critique of tyranny, in that the ruler is not subject to the checks that are in place for keeping democratic

[107] Important bibliography on the debate are Maass (1887); Schwartz (1891), 12–13; Nestle (1908), 29–34; Aly (1929); Stroheker (1953–4); Apffel (1957); Erbse (1960–1); Podlecki (1966); Connor (1971); Lasserre (1976); Lanza (1977); Evans (1981); Lateiner (1984), (1989), 163–71; Pelling (2002), 123–58. For a lucid discussion of the history of the interpretation of this debate, see Asheri-Lloyd-Corcella loc. cit. It has its roots in Pindar *Pyth.* 2.86–8, where within each of the three major constitutional forms (*nomoi*), the straight-talking man thrives. According to Diogenes Laertius, Protagoras wrote a work (the first of those we know) entitled Περὶ πολιτείας, DK 80 A 1.55.

[108] Pelling (2002), 133–4.

[109] It occurs only here in the *Histories* and is unattested before it.

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officials "straight." In his endorsement of *isonomie* at the end of his speech, Otanes also introduces its antithesis, ὑπεύθυνος (*hypeuthynos*), "liable to give an account of one's administration of office" and draws attention to the problematic nature of allowing an individual to be a law unto himself.[110] So too, in the *Persians*, Aeschylus' Atossa says of Xerxes that he is "not liable to give an account to the polis" (213: οὐχ ὑπεύθυνος πόλει). For Otanes, this constitutional flaw is compounded by a structural one in human nature: *phthonos* is an innate feature of man. Compounded by the *hybris* that kingship breeds, monarchy is a system that consistently puts man "outside customary thoughts," ἐκτὸς τῶν ἐωθότων νοημάτων, thus corrupting the individual from the inside out.[111] Otanes' speech again touches upon the abnormal behavior of Cambyses, who had approached the Persian jurisconsults requesting a *nomos* for incest, "because he was contriving to do what was not customary" ὅτι οὐκ ἐωθότα ἐπενόεε ποιήσειν. This judgment treats Cambyses' incestuous desire as an outgrowth of the disease of one-man rule, which in Persia disrupts the individual's relationship to *nomos* while at the same time identifying him with it.

In a rising crescendo of reproaches against monarchy, Otanes lodges his greatest criticism in an echo of the narrator, that the king "disturbs ancestral customs," νόμαιά τε κινέει πάτρια (3.80.5).[112] He then opposes the fairest name, "equality under the law" (ἰσονομίη) to the excesses of monarchy. Equality under the law mandates liability in office (ὑπεύθυνον δὲ ἀρχὴν) and removes the potential for any individual to subsume the power of law. Otanes' use of *isonomie* in this context, instead of the more obvious opposition to tyranny, *demokratia*, requires explanation.[113] After all, on three separate occasions, the *Histories* does refer explicitly to democracy. In the debate between Miltiades and Histaeus on whether the Ionians should leave their position and abandon the Persians under Darius' command in Scythia, Histiaeus is able to prevail by threatening the

[110] Cf. Aesch. *Choeph*. 715; [Aesch.] *PV* 324.

[111] For *hybris* and the Constitutional Debate, see Fisher (1991), 127–8, 346–9. With Pelling (2002), 135, "it is particularly the illogical, contrary character of monarchy that Otanes stresses." Tying one's actions to the contents of thought anticipates in important respects the critiques that Democritus and Plato will make of egoism and its negative effect on the individual's inner well-being, for which, see Nill (1985).

[112] Schwartz (1891), 23, juxtaposes this passage with Eur. *Suppl*. 429f. Evans (1981), 82, suggests similarities with the monarch of [Aesch.] *PV*. See Lateiner (1989), 140–4, for the instances in which tyrants disturb ancestral customs.

[113] Stier (1928), 234, sees a connection between the statement and the scholion of the tyrannicides, ἰσονόμους τ'Ἀθήνας ἐποιησάτην ("they made Athens equal under the law").

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future dissolution of their tyrannies and the establishment of more popular democratic constitutions (4.137.2). In a moment of historical irony, after the Ionian revolt – itself the product of the same Histiaeus' machinations – the Persian Mardonius demolishes the Ionian tyrannies and installs democracies in their respective poleis (6.43.3). Finally, at the conclusion of the courting of Agariste episode, Cleisthenes is said to be the outcome of the marriage and the originator of the Athenian democracy (6.131.1).

In the middle of the twentieth century, Gregory Vlastos argued forcefully for *isonomia* as the popular term for democracy before *demokratia* came into vogue, using Otanes' terminology as primary evidence.[114] Given the later instances in the *Histories* in which democracy was referred to as such, Vlastos argued as an "analyst" that the Constitutional Debate's composition preceded Books 4 and 6 and thus Herodotus' knowledge of the terms *demokratia* and *demokrateomai* necessarily came later. The analyst position is, however, vitiated on the basis of arbitrariness, as there is no firm evidence and no consensus on when any book of the *Histories* was written.[115] More persuasive is the interpretation that the reference to *isonomie* is tailored to Otanes as a speaker; it is a proleptic look at the opposition of tyranny to a broader set of isonomic Greek constitutional forms, including "mixed" constitutions such as Sparta; and perhaps also a demonstration of the way in which Otanes is not fully versed in the language or the reality of democracy.[116]

This usage, then, is comprehensible when considered in light of the opposition that Otanes is making. In the speech, Persian monarchy is structurally flawed due to the tension between the monarch who acts as a *nomos* unto himself while also rejecting ancestral *nomos*. Otanes dismisses this constitutional form for its flawed nomological basis and rhetorically drives this home by defining its opposition as *isonomie*. "Equality before the law" curtails individualist legality more appropriately than *demokratia*.[117] *Isonomie* is a particularly effective opposition to monarchy given the

[114] Vlastos (1953). Brannan (1969), 432–3 and Kinzl (1978), 120, 124, both argue that Otanes does not refer to democracy. Cartledge (2007), 158, interprets Otanes as guarding against the potentially negative connotations of the term *demokratia* as "the dictatorship of the proletariat." Lateiner (1989), 185, writing on *isonomia* affirms, "Otanes' proposal best promotes individual autonomy within a political context."

[115] On the lack of consensus among the analysts, see Lateiner (1989), 5.

[116] Pelling (2002), 137–8. A more critical view of Otanes' political vision is found in Thompson (1994), 72.

[117] For an excellent discussion that differs from my own, see Lateiner (1989), 185–6. On the meaning of *isonomie*, cf. Vlastos (1953); Hansen (1989); Ostwald (1969); Giraudeau (1984); Farrar (1988); Raaflaub (2002).

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system of private law developed by the jurisconsults for Cambyses. Otanes reasserts the force of traditional Persian morality in his critique of the legislation allowing the king to do as he wishes and in his affirmation of the king as an assaulter of *nomaia*.

In the final speech, in support of kingship, Darius obliquely concludes with an answer to Otanes' condemnation of monarchy but rejects his assessment in a shrewd *peritrope*.[118]

> ἔχω τοίνυν γνώμην ἡμέας ἐλευθερωθέντας διὰ ἕνα ἄνδρα τὸ τοιοῦτο περιστέλλειν, χωρίς τε τούτου πατρίους νόμους μὴ λύειν ἔχοντας εὖ· οὐ γὰρ ἄμεινον (3.82.5)
>
> Moreover, I offer my opinion that since we were freed by one man we should support this system – and apart from this, that we should not dissolve our ancestral *nomoi* that are sound. For it is not better.

Darius calls upon tradition too, by appealing to the first Persian King, Cyrus. Cyrus had made himself monarch in place of the Median Astyages and thereby established hereditary Persian kingship – reason enough for the institution to persist in the tense moments following the Magian uprising against Persian rule. Just as Otanes had alluded to the Persian jurisconsults, in order to critique them, so too Darius echoes their language. The verb περιστέλλειν (*peristellein*) is the same as that used by the legal experts in the context of their *justification* of their new *nomos*: οὕτω οὔτε τὸν νόμον ἔλυσαν δείσαντες <τε> Καμβύσεα, ἵνα [τε] μὴ αὐτοὶ ἀπόλωνται τὸν νόμον περιστέλλοντες παρεξεῦρον ἄλλον νόμον σύμμαχον (3.31.5: "In this way they did not break the *nomos*, and since they were afraid of Cambyses, in order that they themselves not die by preserving the *nomos*, they discovered in addition another *nomos* as an ally").[119] Darius' second injunction, not to "dissolve the ancestral *nomoi*" (πατρίους νόμους μὴ λύειν) of monarchy also corresponds to the jurisconsults' desire to maintain Persian *nomos* so as not to suffer punishment from Cambyses, οὕτω οὔτε τὸν νόμον ἔλυσαν.[120] Darius' speech subtly recodes

[118] Darius does not directly address Otanes' problems with monarchy, see, e.g., Stroheker (1953–4), 386; Thompson (1996), 76.

[119] Cf. Eur. *Med.* 582–3, on the *sophos*: γλώσσῃ γὰρ αὐχῶν τἄδικ' εὖ περιστελεῖν | τολμᾷ πανουργεῖν. ("For, confident that he can dress up well what is unjust with his tongue, he dares to act unscrupulously") Maass (1887), 594 n. 2, on this passage, "Der Dichter bewegt sich also auch hier in der metaphorischen Terminologie der grossen Sophisten." ("Also here the poet uses the metaphorical terminology of the great sophists.").

[120] For similar anxiety on the dissolution of *nomoi*, see 1.29.1; 6.106.3. Evans (1981), 83, finds Darius' argument, "peculiarly Herodotean."

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the language of this justification of the regal *nomos* into a broader endorsement of kingship on the basis of tradition and conservatism.[121] He revises Otanes' νόμαια πάτρια ("ancestral customs"), translating them from traditional moral behavior into traditional regal power. The naturalization of monarchy as Persian tradition places those in opposition to it in the position of disturbing *nomos*. It is a shrewd rebuttal of Otanes' statement.[122] Through the juxtaposition of the two Persian grandees and the ultimate success of Darius' reading of Persian ancestral *nomos*, the narrative again thematizes a rift between custom, tradition, law, and popular morality.

In the epilogue to this Debate, the impasse reached by Otanes and Darius is reconfirmed. The defeated Otanes announces his intention to withdraw himself from consideration for the kingship, provided that he and his line remain outside of this rule. After the conspirators all agree to these terms, the mimetic dialogue breaks, and the narrator mischievously concludes, "Even now this house alone of the Persians continues to be free and is ruled only as much as it wishes, if it does not transgress the *nomoi* of the Persians (3.83.3: νόμους οὐκ ὑπερβαίνουσα τοὺς Περσέων)."[123] After these speeches, one wonders: whose *nomoi*? Is Otanes focalized, for whom kingship is antithetical to *nomos*? Or Darius, who successfully defines Persian *nomos* as kingship?[124] The narrative's denouement plays its final note on just this ambiguity, leaving the tension between royal *nomos* and Persian tradition unresolved.[125]

[121] Erbse (1992), 57–8, notes the tension in Darius' response with regard to Persian tradition. It is clear that conservatism in the face of the mercurial changes of *nomos* was a desideratum, cf. the *Anonymous Iamblichi*, DK 89 B 6.1–7.16. The thoughtful recoding of the previous speeches occurs at the level of almost Prodicus-like care with language, where Darius refers not to a τύραννος but μούναρχος, as Nestle (1908), 31, observes.

[122] With Pelling (2002), 45, "the narrative itself has suggested that these 'traditions' could not so blandly be assumed to 'be good ones,' not after Cambyses, not we would think after Otanes' speech." Cf. too Stroheker (1953–4), 396. Differently, Evans (1961), 111, treats Cyrus as a just lawgiver in the vein of Solon and Lycurgus on the strength of this passage; Redfield (1985), 116, "The hereditary *nomos* of the Persians is monarchy (3.82.5), whereas the Greeks enjoy free institutions." Similar commentary is found in Waters (1971), 98.

[123] Pelling (2002), 145–6, cautiously ties this into Darius' statement that Cyrus "freed" the Persians. For the wise man as not beholden to the laws, Democritus, DK 68 A 166; Antiphon B 44, *passim*.

[124] The democracy spurned motif arises again at 3.142.3, with Maiandrius' attempt to resign his rule of Samos and establish *isonomie* because of his understanding of his fellow citizens as "alike," ἀνδρῶν ὁμοίων, contrary to Polycrates; it is of note that the Persian general sent on the expedition against Maiandrius is Otanes, 3.141. The equality of the citizens underpins Athenagoras' criticism of the would-be oligarchs in Syracuse, who do not want to be counted as equal under the law (ἰσονομεῖσθαι) with the masses, Th. 6.38.5.

[125] This section is an expansion of arguments found in Kingsley (2018). Schlosser (2020), 69–74, has come to some similar conclusions.

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It is instructive to compare the differing identifications of *nomos* that we find in the speeches of Otanes and Darius with another Constitutional Debate, that between Pericles and Alcibiades in Xenophon's *Memorabilia*. In the course of Xenophon's argument that Socrates did not corrupt Critias and Alcibiades, nor incite them to their later excesses, Xenophon recounts their initial companionship with Socrates. This companionship, we are warned, was always already subordinate to the goal of their eventual political hegemony. An example of this is given in the form of Alcibiades' eristic dialogue with the first man of Athens, Pericles. The youthful Alcibiades begins by questioning Pericles on the definition of *nomos*, a topic of philosophical importance, as we have seen. Pericles gives the rather bland response that *nomos* is identical to the people's legislative acts in the assembly, "for all these are *nomoi* that the majority after coming together and making a scrutiny of them, ordained, indicating through them what one ought and ought not do (1.2.42)." After Pericles is made to agree that the outcome of law is τἀγαθά ("what is good"), Alcibiades sets out to refine this definition by questioning the importance of the majority to *nomos*: "But if, as happens under an oligarchy, not the majority, but a minority (ὀλίγοι) meet and enact rules of conduct, what are these (1.2.43)?" Alcibiades presses the implications of this definition of *nomos* for a non-democratic polity. Forced to modify his statement, Pericles gives an answer not unlike that of a Protagoras, whereby all ruling legislative bodies pass *nomoi*. The dialogue continues:

> κἂν τύραννος οὖν κρατῶν τῆς πόλεως γράψῃ τοῖς πολίταις ἃ χρὴ ποιεῖν, καὶ ταῦτα νόμος ἐστί; καὶ ὅσα τύραννος ἄρχων, φάναι, γράφει, καὶ ταῦτα νόμος καλεῖται. βία δέ, φάναι, καὶ ἀνομία τί ἐστιν, ὦ Περίκλεις; ἆρ' οὐχ ὅταν ὁ κρείττων τὸν ἧττω μὴ πείσας, ἀλλὰ βιασάμενος, ἀναγκάσῃ ποιεῖν ὅ τι ἂν αὐτῷ δοκῇ; ἔμοιγε δοκεῖ, φάναι τὸν Περικλέα. καὶ ὅσα ἄρα τύραννος μὴ πείσας τοὺς πολίτας ἀναγκάζει ποιεῖν γράφων, ἀνομία ἐστί; δοκεῖ μοι, φάναι τὸν Περικλέα· ἀνατίθεμαι γὰρ τὸ ὅσα τύραννος μὴ πείσας γράφει νόμον εἶναι. (1.2.43–4)

> [Alcibiades:] "So, then, even if a tyrant who rules over the city prescribes what the citizens ought to do, are these things *nomos* as well?" And he [Pericles] said, "whatever a ruling tyrant prescribes is also called a *nomos*." "But," he responded, "what is force and lawlessness, Pericles? Is it not when the stronger party compels the weaker party, not by persuasion but by force, to do whatever seems good to him?" "I certainly think so," said Pericles. "Consequently, whatever a tyrant compels his citizens to do, not by persuasion, but by prescription, is it lawlessness?" "I think so," said

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> Pericles. "For I retract the position that whatever a tyrant prescribes, unless through persuasion, is *nomos*."

Pericles initially expands his definition to include the variety of constitutional forms that his interlocutor confronts him with, identifying *nomos* with the generic head of state. Alcibiades draws out the flaw in this argument by raising tyranny as a limiting case study, which is by definition a constitutional form that governs by force rather than persuasion. The association of *nomos* with convention remains strong, and this calls into question the legitimacy of Pericles' position; on his reading, the compulsory edicts of a tyrant would have the same legal force as those passed by persuasion in a democratic assembly. The tyrant dismantles tradition, and this ultimately forces Pericles to withdraw his assessment of the definition of *nomos* to emphasize again the importance of its status as socially supported. As a constitutional form, tyranny is ultimately recognized as antithetical to the establishment and maintenance of *nomos*. The sophistic nature of the discussion is explicitly flagged by Pericles, who tells Alcibiades "on such things we exercised our ingenuity and devised as those you seem to me now to preoccupy yourself with" (1.2.46).

Xenophon's recounting of the discussion between Pericles and Alcibiades, if historically improbable, remains a valuable witness to the contested nature of *nomos*, continuing into the early fourth century.[126] More importantly, it resonates with the issues debated in Herodotus' Constitutional Debate. The position of the ruler in relation to *nomos* was evidently one of importance. Yet the conclusion of Alcibiades, Pericles, and Otanes, that the tyrant who rules by force is at odds with *nomos*, is one that the Persian conspirators ultimately reject when they side with Darius and reinstitute Persian monarchical rule. Darius is able to turn the tables on Otanes by identifying *nomos* not with Persian norms that are being transgressed by the ruler but with the ancestral tradition of monarchy, which the seven conspirators themselves are putting under threat by questioning its efficacy.[127] Like Pheidippides after his time in the

[126] Bandini and Dorion (2000), ccxl–cclii, address the problematic dating of the *Memorabilia*, noting that dating divides scholars into unitarians and analysts. Kahn (1996), 30, suggests that it was begun during Xenophon's exile and continued into the 360s, following Lesky (1957–8), 468; Delebecque (1957), 221–35, 477–95, also sees two main periods of composition, the first for Books 1–2 (381 BCE) and the second for 3–4 (355/54 BCE). Bandini and Dorion (2000), ccli, disagree with this conclusion, and argue that there is nothing keeping Books 1–2 from being written at the same late date as 3–4.

[127] Conveniently overlooking Herodotus' ethnographic comment that the Persians above all men adopt foreign *nomaia*, 1.135.

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"Thinkery," Darius weaponizes *nomos*. In the latter's case, it elides a critique of monarchy as ethically corrosive. One-man rule in Persia adapts itself to a logic whereby the unjust actions of the Great King are naturalized as cultural tradition. As fifth-century philosophical debates did, so too does the text dramatize the fraying of justice's relationship to *nomos*.[128]

The Project of Empire and Justice

The separation of *nomos* from considerations of justice continues to evolve beyond the reign of Cambyses, through the exploration of the Persian Empire's role in the suffocation of local identities. Persian expansion threatens individual societies' customs, traditions, and laws, through the imposition of its own *nomoi*. The apparently simple calculus of 3.38, whereby *nomos* is king of all, is vexed yet again through the confrontation of *nomoi* within an imperial structure. It is clear from the start of the Persian imperialist project that foreign *nomoi* will suffer. The *histor* singles out Babylon's "wisest" *nomos*, the marriage auction, for a long and encomiastic description. His concluding statement reveals, however, that this is not a custom that exists any longer – this *was* Babylon's best custom, though the narrator only draws attention to this at the end of his description:

> ὁ μέν νυν κάλλιστος νόμος οὗτός σφι ἦν, οὐ μέντοι νῦν γε διατελέει ἐών, ἄλλο δέ τι ἐξευρήκασι νεωστὶ γενέσθαι [ἵνα μὴ ἀδικοῖεν αὐτὰς μηδ' εἰς ἑτέραν πόλιν ἄγωνται]. ἐπείτε γὰρ ἁλόντες ἐκακώθησαν καὶ οἰκοφθορήθησαν, πᾶς τις τοῦ δήμου βίου σπανίζων καταπορνεύει τὰ θήλεα τέκνα. (1.196.5)
>
> Now their finest custom was this; however, it does not continue nowadays, but lately they have discovered something new. For, after they were seized, maltreated, and had their resources ruined, every member of the people in need of a livelihood prostitutes his female children.

Herodotus is careful to emphasize that the destruction of this custom is a result of the Persian imperialist project, and in this way the ethnography represents not just a synchronic portrait of the cultural landscape of Babylon but a diachronic one that draws out the social cost of Persian

[128] Schwartz (1891), 12, aptly concludes his discussion of Deioces by stating that for Herodotus, who on his reading has likely borrowed this episode from a sophistic treatise, "per ipsam iustitiam libertas in dominationem mutari possit" ("freedom can be changed to domination through justice itself").

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hegemony. Likewise, Herodotus' elaboration of Egyptian *nomos* is painstaking in its detail, a fact that throws into relief the corruption of these traditions that will occur after Cambyses' conquest. That the extinction of individual Greek autonomy is at stake in the Greco-Persian Wars is evident, for example, in the forced establishment of democracies in Ionia by Mardonius (6.43.3). This is even more clear at the end of the *Histories*, where Xerxes communicates through his Macedonian mouthpiece, Alexander, a message on coming to terms with Persia. Athens will not only receive as gifts from Persia additional land and temples but do so, "while being ruled by its own *nomoi*" (ἐόντες αὐτόνομοι).[129] Xerxes' words are intended to allay a real anxiety, namely, the suppression of local *nomoi*. By contrast, the Persians' imperial reach makes them the most willing of all peoples to adopt the *nomoi* of others (1.135); however, they do so on their own terms.

The attack on indigenous *nomoi* that Persian rule represents is perhaps most forcefully demonstrated during a Persian embassy to Macedonia, to the king Amyntas and this same Alexander.[130] The deputation seeks earth and water, the standard symbols of political submission, which Amyntas freely gives. Yet these symbols take on a new dimension during an elaborate banquet that tests Macedonian compliance, as the Persians say to Amyntas:

> ξεῖνε Μακεδών, ἡμῖν νόμος ἐστὶ τοῖσι Πέρσῃσι, ἐπεὰν δεῖπνον προτιθώμεθα μέγα, τότε καὶ τὰς παλλακὰς καὶ τὰς κουριδίας γυναῖκας ἐσάγεσθαι παρέδρους. σύ νυν, ἐπεί περ προθύμως μὲν ἐδέξαο, μεγάλως δὲ ξεινίζεις, διδοῖς τε βασιλέϊ Δαρείῳ γῆν τε καὶ ὕδωρ, ἕπεο νόμῳ τῷ ἡμετέρῳ. εἶπε πρὸς ταῦτα Ἀμύντης· ὦ Πέρσαι, νόμος μὲν ἡμῖν γέ ἐστι οὐκ οὕτος, ἀλλὰ κεχωρίσθαι ἄνδρας γυναικῶν· ἐπείτε δὲ ὑμεῖς ἐόντες δεσπόται προσχρηίζετε τούτων, παρέσται ὑμῖν καὶ ταῦτα. (5.18.2–3)
>
> "Macedonian friend, we Persians have a *nomos*: whenever we put forward a large dinner, then we bring in our concubines and wives to sit alongside us. You now, since you have received us eagerly and entertained us lavishly and are giving earth and water to king Darius, follow our *nomos*." And Amyntas said in response: "Persians, this is not our *nomos*, but to have men and women kept apart. But since you who are our masters request it, these things will be yours as well."

[129] 8.140.2. The term is quite rare in the *Histories* and used only once elsewhere, of the Medes prior to the reign of Deioces, 1.96.1, where Deioces practices justice to entice the Medes from autonomy.

[130] For this passage, see Scaife (1989); Borza (1990); Badian (1994); Fearn (2007), 98–127. Dewald (1981), 97–8, discusses the threat to family.

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Although differing *nomoi* are equally valid, imperial expansion undermines this.[131] The logic of empire is here set in stark terms. The embassy, functioning metonymically as the Great King (δεσπόται), claims to enforce the *nomos* of Persia on the basis of its political supremacy.[132] The natural consequent of earth and water is presented, therefore, as cultural subordination. Again, the Persians use the power of *nomos*, their own, to sanction unethical behavior among the Macedonians. Macedon's loss of autonomy – in this case, with respect to traditional sympotic and sexual practices – suggests that in the context of its domination, Persian *nomos* is king of all.[133] Amyntas' forced acceptance (ἀναγκαζόμενος) of foreign custom represents one reaction to Persian domination. Immediately after this submission, Amyntas' son, Alexander, a "youth," νέος (*neos*), "lacking experience of evils," κακῶν ἀπαθής, presents an alternative one. Unable to endure the insult, he sends his father away and, through a theatrical ruse, massacres the embassy. In doing so, at least momentarily he reasserts the authority of Macedonian *nomos*.[134] Through a series of bribes and intermarriages, Alexander eventually reintegrates the Macedonians into the good favor of the Persians;[135] nonetheless, his rejection of the forced imposition of a foreign norm remains a powerful statement of resistance to cultural imperialism.[136] Amyntas and Alexander represent two opposing responses of a subject population to Persian cultural imperialism, without resolving the conflict.

[131] This would have resonated with the Athenian imposition of *nomos* on their "allies," for which, see Ar. *Av.* 143–7, 1035–45, 1202–5, 1344–57; similarly, Ps.-Xen. *Ath. Pol.* 16–18, complains that the allies are made slaves through their enforced use of Athenian courts.

[132] In fact, they move beyond cultural domination and begin to display the negative quality characteristic of Greek tyrants and Persian monarchs – sexual rapacity – this transgresses both Persian and Macedonian *nomos*.

[133] See Scaife (1989), 132–7, who picks up Alexander's association with the clash of cultures; at 133 he well notes that this passage illustrates the "relative nature of νόμος." Fearn (2007), 104, 101, rightly finds that, "The opening dialogue … is structured around opposing *nomoi*," although his interpretation of what this means differs markedly from my own.

[134] A different interpretation is found in Fearn (2007), 103–5, for whom Alexander's actions are not the reestablishment of *nomoi*, "Though the focus on the narrative appears to be on the opposed *nomoi* of Macedonians … and the Persians in their treatment of women … other details serve to confuse the picture and suggest that Macedonian conventions may themselves be tyrannical." He finds Alexander's marriage of his sister to the Persians, 104, "the culmination of his own implicit submission to the Persian *nomoi*." For *nomos* as the guarantor of justice in the event of a violation of guest-friendship, Eur. *Hec.* 802–5.

[135] The irony is that he is more intertwined with Persia as a result, e.g., Dewald (1981), 98. For the historical backdrop to this episode, see Harrison (2019).

[136] Cf. 2.79.1; 4.76.1; 4.80.5.

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Parallel to the ambiguous position of *nomos* for the subjects of Persia is the assessment of abstract justice.[137] In the course of the Persian invasion of mainland Greece, Xerxes engages in an extended dialogue with his "wise advisor," Artabanus, on the brevity and brutishness of life, on the prospect of Persian success against Hellas, and the dangers presented by the sea and the land. Artabanus turns to the enlistment of the Ionians among the Persian forces, recounting their conquest by Cyrus and their close relationship to Athens, their fathers (τοὺς πατέρας). In his rhetorical push to gain Xerxes' assent to leave them behind, Artabanus relies upon an argument based on justice and kinship:

> ἢ γὰρ σφέας, ἢν ἕπωνται, δεῖ ἀδικωτάτους γίνεσθαι καταδουλουμένους τὴν μητρόπολιν, ἢ δικαιοτάτους συνελευθεροῦντας. ἀδικώτατοι μέν νυν γινόμενοι οὐδὲν κέρδος μέγα ἡμῖν προσβάλλουσι, δικαιότατοι δὲ γινόμενοι οἷοί τε δηλήσασθαι μεγάλως τὴν σὴν στρατιὴν γίνονται. (7.51.2–3)
>
> For, if they follow you, either they must become the most unjust of men by enslaving their mother city or the most just by joining in freeing it. Now by becoming the most unjust of men they effect no great gain for us, but by becoming the most just they can damage your army greatly.

At the battle of Salamis, the Ionians do prove themselves loyal, and presumably unjust, by warring against the Athenians. However, Artabanus' speech identifies a key weakness in the Persian force and rightly presages the rhetorical thrust of Themistocles' plea to the Ionians following the battle of Artemisium. Themistocles inscribes the stone faces in the region with words that correspond closely to Artabanus': "Ionian men, you do not do what is just by waging a war against your fathers and enslaving Greece" (8.22.1: ἄνδρες Ἴωνες, οὐ ποιέετε δίκαια ἐπὶ τοὺς πατέρας στρατευόμενοι καὶ τὴν Ἑλλάδα καταδουλούμενοι). It is the perception of an Ionian revolt from Persia that leads Xerxes to end his naval campaign against Greece; his fears that the Ionians might side with the mainland Greeks and suggest the destruction of the bridges at the Hellespont, or that they themselves would do it, led to his retreat to Asia.[138] And as the Greek audience would well know, the revolt of the Ionians during the battle of Mycale decisively ended the Persian naval threat to Greece. Artabanus'

[137] For the pressure on justice from the sophists, see de Romilly (1992), 111–33.

[138] 8.97.1. Cf. Hdt. 9.103.2. Commenting on this passage, Macan finds this the moment in which the Ionians "threw off their allegiance to Persia."

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cultural fluency in Greek colonialism manifests in his awareness of the dual danger of allowing Ionia to march against her putative mother-city.[139]

Xerxes responds to Artabanus' warning in kind, stressing the justice of the Ionians, but recalls the historical lesson of Scythia. As has already been narrated twice, Darius' disastrous campaign only escaped total annihilation because of the intervention of the Ionian tyrants. Xerxes offers the tyrants' decisive support of Persia in this crucial moment as an example of Ionia's fidelity to the imperial power. Importantly, he identifies obedience as their justice, "they gave us justice and loyalty and nothing at all thankless" (7.52.1: οἳ δὲ δικαιοσύνην καὶ πιστότητα ἐνέδωκαν, ἄχαρι δὲ οὐδέν). By analogy, the Great King suggests that the Persians now have nothing to fear from the Ionians due to this test of their caliber. Appropriately, Xerxes reads "Ionian tyrants" as "the Ionians," displaying an inability to discern the difference between the ruler and his subjects.[140] Ionian justice, on this reading, is precisely their rejection of the Athenian claim in favor of Persia.[141]

As has often been noted, Herodotus creates alternative narratives that allow the reader to choose a variant; similarly, he presents alternative positions on justice in relation to imperialism.[142] In crafting the opposing focalizations, which in fact simply speak past one another, the text reinforces the destabilized referents for terms such as *dikaiosyne* and *nomos*. Where imperialism is involved a confusion of values can occur through the manipulation of language.

Nomos and Imperialism

As I have argued above, the historical narrative engages with the ethical impact of relativism and its potential for destabilizing popular morality from *nomos* and, at times, *dike*. By juxtaposing popular tradition and revisionary values prompted by the Persian ruler and the Persian imperial project, the text dramatizes this philosophical problem as a historical one

[139] Th. 6.82.4, for the Athenian reception of this act during the Peloponnesian War; for its relation to Herodotus' portrait of Ionia, see Thomas (2004), 31–41.

[140] For Xerxes' identification of his pleasure as the motivation of his subjects, see 7.8.δ1.

[141] Thomas (2004), *passim*, discusses the tradition of Ionia in the *Histories* in the context of the later Athenian empire. Artabanus' assessment of the injustice of Ionians' siding with Persians would have been provocative to read in light of later revolts from Athenian hegemony and appeals to Persia, see Luraghi (2018). Cf. 3.19.2 and the Phoenician refusal to sail against Carthage and Cambyses' acceptance of their reasoning.

[142] Lateiner (1989), 76–90; Grethlein (2009), 200, suggests that these display differing uses of the past, which is not at odds with my focus on differing uses of ethical norms.

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with its roots in domination, both internal and external to Persian rule. These two narrative strands – tyrannical and imperial – intersect at a key moment prior to Xerxes' invasion, in the council called to introduce the campaign against Greece.

We are informed that from the start of his reign Xerxes was not at all eager to move against Greece and that the decision to invade was made after a long series of prods from interested parties.[143] A catalog of aristocrats lend their persuasive force, beginning and ending with Xerxes' cousin Mardonius, who was himself motivated by a private desire to have Greece as a satrapy. Mardonius argues for the invasion on the grounds of vengeance owed to the Athenians and Eretrians for their unjust participation in the Ionian Revolt, as well as on the basis of the bounty of the Greek mainland; the Aleuadae, kings of Thessaly, come to offer their assistance on the ground; the exiled Peisistratids too persuade Xerxes with promises of support and information; and an Athenian oracle-monger, Onomacritus, recites select oracles of Musaeus favorable to a Persian invasion. The unified front of these speeches eventually works upon Xerxes, and he assents to the offensive. The narrative stresses that the Great King *is persuaded*, making him the passive recipient of the rhetorical tactics of court politics, first by Mardonius, χρόνῳ δὲ κατεργάσατό τε καὶ ἀνέπεισε Ξέρξην ὥστε ποιέειν ταῦτα. συνέλαβε γὰρ καὶ ἄλλα οἱ σύμμαχα γενόμενα ἐς τὸ πείθεσθαι Ξέρξην (7.6.1: "in time he prevailed on and convinced Xerxes to do these things. For other allies combined with him to persuade Xerxes") and then by the intervention of the foreigners Mardonius had engineered to be present, ὡς δὲ ἀνεγνώσθη Ξέρξης στρατεύεσθαι ἐπὶ τὴν Ἑλλάδα (7.7: "so Xerxes was convinced to war against Greece"). That Xerxes is presented as a passive figure is confirmed by the later words of his wise advisor, Artabanus, who likens the king's decision to attack Greece to the behavior of the sea: calm by its own nature but whipped into frenzy by the winds.[144] Analogously, the company of interested parties keeps Xerxes from his initial reluctance.

Following his decision to invade, Xerxes holds a council to set out his plans for moving against Greece and, allegedly, to learn the opinion of his fellow Persian elites. The Council Scene is a meticulously articulated tableau. It elaborates the aetiology of the Greco-Persian Wars and as such unfolds metonymically to reflect upon the question driving the *Histories* as a whole. Xerxes' speech begins not with strategy but with his motivation for moving against the Hellenes,

[143] On the plurality of causes spurring Xerxes, see Apfel (2011), 179–81. [144] 7.16.α1.

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> ἄνδρες Πέρσαι, οὔτ' αὐτὸς κατηγήσομαι νόμον τόνδε ἐν ὑμῖν τιθείς, παραδεξάμενός τε αὐτῷ χρήσομαι. ὡς γὰρ ἐγὼ πυνθάνομαι τῶν πρεσβυτέρων, οὐδαμά κω ἠτρεμίσαμεν, ἐπείτε παρελάβομεν τὴν ἡγεμονίην τήνδε παρὰ Μήδων, Κύρου κατελόντος Ἀστυάγεα· ἀλλὰ θεός τε οὕτω ἄγει καὶ αὐτοῖσι ἡμῖν πολλὰ ἐπέπουσι συμφέρεται ἐπὶ τὸ ἄμεινον. (7.8.α1)
>
> Men of Persia, I do not lead the way in establishing this *nomos* among you – but having inherited it, I will make use of it. For, as I understand from our elders, up to the present we have not at all kept still since we took this hegemony from the Medes, when Cyrus dethroned Astyages. But a god leads in this way and when we attend to many things it turns out for the better.

The standard interpretation sees Xerxes as rightly "reading" Persian history as it preceded him. So, according to Joseph Skinner, "To explain the rise of Persia it is necessary to understand Persian manners and customs – of which the overarching *nomos* of expansion from which Xerxes *was ultimately unable to escape* is arguably the most important."[145] From this perspective, Xerxes is not inventing a *nomos* but describing an existing one within Persia.[146] Similarly, Emily Baragwanath emphasizes the accuracy of Xerxes' assessment in this passage, "the king lays striking emphasis on his respect for *nomos* and plays down the relevance of his personal views (7.8α.1). Xerxes emerges not as a victim of personal lusts, but as a figure whose decisions are influenced above all by his understanding of the past."[147] His self-presentation certainly does suggest this reading and is reinforced by his succeeding statement that immediately upon inheriting

[145] Skinner (2012), 245, with my italics. Cf. Lateiner (1989), 181, "Herodotus presents Xerxes' real freedom of choice as somehow limited metaphysically by fate and his tragic destiny, but most importantly by his status and Persian *νόμοι*, from which any concept of international justice is absent." See also Raaflaub (2002).

[146] Often noted as constituted by Persian πολυπραγμοσύνη ("meddlesomeness") and πλεονεξία ("cupidity"), e.g., Scardino (2007), 351. For human involvement in this *nomos*, see Evans (1991), 26, "An ancestral *nomos* directed the Persians always to push on and maintain the momentum of expansion. Xerxes thought that they were led by a god, but he was wrong: *nomoi* in the *Histories* evolve on the human, not the divine level, and the *nomos* that brought Persia her empire was based on deliberate choice quite as much as any other custom. Xerxes' conviction that the *nomos* of expansionism had divine sanction was myopic. It was a symptom of blindness." It is noteworthy that Aesch. *Pers*. does not use *nomos* aetiologically or at all.

[147] Baragwanath (2008), 243. She continues, 244, "Even as they [the external audience] sense the limited and rather misguided nature of an interpretation that chooses these men's careers to prove the wisdom of active conquest (for their respective attempts were by no means wholly successful), the carefully reasoned character of Xerxes' stance – which is even based on Herodotean-style enquiry – is conspicuous." For a similar view, see Evans (1961), 110; Immerwahr (1966), 321–2; Scardino (2007), 350–5; Zali (2015), 151–2.

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the throne he began to consider how not to fall short of his ancestors (7.8.α2).[148] Yet, interpreting Xerxes as a reliable *histor* invites comparison with what he narrates, and it is immediately clear that his motivation to invade is much more complex than he reveals.[149] His passivity in arriving at this resolution is muted; instead, the *nomos* of expansion and his emphasis on his historical understanding present the king as bound to conquer Greece by tradition.[150] Rather than identifying Xerxes as one compelled by historical sensibility to war, the narrative was careful to stress the effortful machinery of the Persian court. Notably, none of their arguments in favor of the offensive brought *nomos* to bear on the question of invasion; Xerxes appears to revise his motivation in stride and to translate the chorus of his confidantes into the more rhetorically expedient *nomos*.

It might be objected that Xerxes' reluctance about the choice to invade was specific to Greece and not a pause or a check on expansionism itself. Recall, however, that Xerxes inherits two planned campaigns from his father, Darius. One against Egypt, which had only recently revolted, and another against Greece, in response to Athens' attack on Sardis (7.1–7.2.1). It is the expectation of a two-pronged invasion by Darius that leads to the excursus on his selection of Xerxes as successor to the throne. When the expectation of invasions is frustrated by Darius' death, Xerxes is against expansionism into Greece and for the reintegration of Egypt (7.5.5), which is a restoration of territory rather than an extension of it. The initial parallelism of the assaults on Greece and Egypt becomes even weaker in the narration of Xerxes' campaign against Egypt, which is

[148] Scholars have been tempted into reading this as a narratorial position, e.g., Scardino (2007), 350. Closest to my interpretation is Fornara (1971), 88–9, "The task is not to render intelligible to the Greeks the cause of Persian attack. It is to explain the cancerous nature of imperialism; to show how inevitably *moral corruption* is entailed by it" (my italics). I agree with Grethlein (2009), 213, in his general point that "Xerxes' attitude to history is crooked and highly problematical."

[149] For Xerxes as a historian, see Christ (1994); Grethlein (2009); Branscombe (2013). The opposition of true and alleged motivation in the context of a Persian imperial mission is observed by the king of the Ethiopians at 3.21.2.

[150] For the *nomos* of imperialism, see Fornara (1971), 88–9; Raaflaub (2002), 174–6; Gigante (1956), 121–2, "La potenza violenta è in Erodoto attributo distintivo del *nomos* dei Barbari. Di questo *nomos* Serse pone le basi negli avi e la prima radice nella divinità (questo indiamento è tipicamente sofistico)." ("Violent power is in Herodotus a distinctive attribute of the *nomos* of the barbarians. Of this *nomos*, Xerxes places the foundation in ancestors and the primary origin in the divine (this union is typically sophistic)." For this passage, see Pohlenz (1937), 124. Evans (1965), 146: "But Xerxes goes on to imply that Heaven gave this *nomos* its imprimatur." Dihle (1962), 217, is probably correct to note that the speech of Xerxes, in its emphasis on Feindschaft, "enmity," is indebted to sophistic discussions on the sense and use of laws; he compares it with Glaucon at Pl. *Resp*. 358d–61d.

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reduced to a single circumstantial participle after the fact, "now after subjecting them" (7.7: τούτους μέν νυν καταστρεψάμενος). The subsequent confrontation between Xerxes and Artabanus on whether or not to march against the Greeks, after Xerxes has been convinced to do so, turns on a polar opposition of Persian motion versus rest.[151] In his address to the Persians, Xerxes highlights Persia's unwillingness to keep still (7.8.α1: οὐδαμά κω ἠτρεμίσαμεν) and states that the god "leads" (ἄγει) their marches. The distinction between expansionism into Greece and the resubjugation of Egypt is made clear in what follows, in Xerxes' interpretation of his offensive against Greece as his first act of adding power to the Persian Empire. The motif of motion versus rest continues in Artabanus' opposition of destructive haste to constructive waiting (7.10.ζ). It is notable that Xerxes responds with the astonishing pronouncement that "if we will keep quiet, they (i.e., the Greeks) will not" (7.11.2: εἰ ἡμεῖς ἡσυχίην ἄξομεν, ἀλλ' οὐκ ἐκεῖνοι). When the Great King has been convinced of the folly of his errand by Artabanus, his order to the Persians is to "be at rest" (7.13.3: ἥσυχοι ἔστε). Finally, as noted earlier, the analogy that Artabanus uses to describe the conduct of Xerxes refers to him as a naturally calm sea, disturbed by winds (7.16.α1). The thread uniting the march into Greece with expansionism is importantly distinct, then, from Xerxes' punitive expedition back into Egypt. Once the project of invasion into Greece has been abandoned, it is expansionism itself that is checked, given the stress on Persian motionlessness, quiet, and rest. This harks back to Cyrus' ill-fated invasion of the Massagetes. Tomyris, its queen, bids Cyrus to cease his "haste" in the marked polyptoton, παῦσαι σπεύδων τὰ σπεύδεις (1.206.1), while recognizing that he prefers anything to "rest" (1.206.2: ἀλλὰ πάντως μᾶλλον ἢ δι' ἡσυχίης).

How, then, are we to interpret Xerxes' oratorical strategy in his first speech? First, *nomos* bound to imperialism elides considerations of popular justice and injustice. Indeed, Xerxes treats vengeance against Athens and Eretria as almost an afterthought and immediately subsumes the two into a broader plan to attack Greece.[152] Appropriately for these ballooning ambitions, he envisions enslaving the guilty as well as the guiltless, οὕτω οἵ τε ἡμῖν αἴτιοι ἔξουσι δούλιον ζυγὸν οἵ τε ἀναίτιοι (7.8.γ3: "so both the

[151] See Clarke (2018), 272–87, on the geographical themes of stability and mobility.

[152] 7.7.α2, φροντίζων δὲ εὑρίσκω ἅμα μὲν κῦδος ἡμῖν προσγινόμενον χώρην τε τῆς νῦν ἐκτήμεθα οὐκ ἐλάσσονα οὐδὲ φλαυροτέρην παμφορωτέρην δέ, ἅμα δὲ τιμωρίην τε καὶ τίσιν γινομένην ("upon reflection I find that glory accrues to us and a land no smaller nor poorer than the land we now possess, but more fertile, and at the same time comes vengeance and retribution"), with Darbo-Peschanski (1987), 50–1.

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guilty and guiltless will bear a yoke of enslavement"), in a turn of phrase that rivals Cambyses in its departure from popular morality.[153] Indeed, a passage that commentators often juxtapose with Xerxes' appeal to *nomos* is the Athenian imperial bid for the necessity of *physis* (ὑπὸ φύσεως ἀναγκαίας) as the motive force for their attack against the Melians.[154] Thucydides' Athenians infamously assert their independence from popular morality by stating that their imperialist impulse (ἂν κρατῇ, ἄρχειν) is justified by *nomos*:

> καὶ ἡμεῖς οὔτε θέντες τὸν νόμον οὔτε κειμένῳ πρῶτοι χρησάμενοι, ὄντα δὲ παραλαβόντες καὶ ἐσόμενον ἐς αἰεὶ καταλείψοντες χρώμεθα αὐτῷ, εἰδότες καὶ ὑμᾶς ἂν καὶ ἄλλους ἐν τῇ αὐτῇ δυνάμει ἡμῖν γενομένους δρῶντας ἂν ταὐτό. (5.105.2)
>
> We neither established this *nomos* nor are we the first to use it once established; we received it already in existence and use it and will leave it after us for all time. We know that you and others coming into our same power would do the same.

The Athenians blur the distinction between *nomos* and *physis*, leading to their self-satisfied conclusion that imperialism is a *nomos* that nature pursues. Their calculated analysis reveals the extent to which the Athenians are interested in justifying their popularly immoral behavior as part of a universal "law" of the strong ruling the weak. It is the long influence of imperialism on historical action that underwrites this ethical position. Xerxes' strategy in explaining his advance on the Greek mainland is not dissimilar in its appeal to *nomos*; he too denies establishing the *nomos* of imperialism (7.8.α1: οὔτ' . . . νόμον τόνδε . . . τιθεὶς) but states that he has received it and will use it (χρήσομαι).[155] Xerxes looks to the more limited sphere of Persian history in order to justify his actions, beginning with the succession (παρελάβομεν) of empire from Astyages to Cyrus. The Athenians gesture to a much more expansive inheritance (παραλαβόντες) in the past, one that will continue into the future. Unlike the Athenians in

[153] See Flower (2006), 276–7, for interlocking lines of causation: (1) Athens and Eretria are seen as responsible for the war and (2) the Persian attack on all of Greece occurs due to their imperialistic drive.

[154] Gomme made a marginal note with this connection, as observed in *HCT* 5.105.2; for literature on the connection between Herodotus and Thucydides on this passage, see Hornblower ad 5.105; Raaflaub (1987), 227–8; (2002), 176; Forsdyke (2006), 229–30.

[155] On this passage and Herodotus, Connor (1984), 156, is instructive: "The contrast between the Persian and the Peloponnesian War runs through many sections of the *Histories*, a counterpoint or subtext to the surface narrative. . . It now becomes evident in the Melian Dialogue." Scanlon (1994) notes that Xerxes omits reference to *physis* as driving expansion.

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the Melian Dialogue, however, the challenge that a *nomos* of expansionism poses to normative Persian social values is rarely emphasized. Perhaps this is because Xerxes rightly identifies a historical reality in Persia – they *are* seldom at rest (7.8.1: οὐδαμά κω ἠτρεμίσαμεν).[156] But so too do the Athenians rightly observe that the strong dominate the weak. While these are historical facts, glossing *nomos* as their motive force remains a provocative position, and one that departs from popular morality in Persia and in Athens.[157]

Xerxes' position identifies *nomos* as the impetus of the ruler, even though elsewhere in the narrative it is the mandate of a given society. Note also the resistance of the Persians to the campaign immediately following the speeches of Xerxes and Mardonius, "All the rest of the Persians were silent and did not dare to raise a judgment opposed to the one set before them" (7.10.1). Their stifled desire to protest the campaign becomes a bow of joy after Xerxes reverses his position and orders the Persians to be quiet (7.13.3). Persia's internal resistance to the offensive suggests that this *nomos* is not socially constituted but imposed. Its historical merit is also compromised in an earlier episode, when Darius decides to go to war with Greece not from a compulsory divine *nomos* but from a desire to keep the Persians from inciting a revolution against him. Atossa motivates him to wage war against Greece by warning him of potential Persian revolution if the people remain quiet (3.134.2).

An additional difficulty for Xerxes' reading of Persian imperial history as *nomos* is its departure from popular morality in Persia, where the subjugation of innocents was not a rhetorical argument for expansionism.[158] This

[156] Cf. the empire of the Medes and Cyrus, who are described as not wanting to be still at 1.185.1, 1.190.2. At 7.18.3 Artabanus retreats from his position that Xerxes would be the happiest of men if "remaining quiet" (ἀτρεμίζοντά) following the divine dream; the Spartans attain *eunomia* and cannot keep quiet, 1.66.1; and at 7.149.3 the Argives complain of Sparta's *pleonexia*, "greediness." Cf. Verdin (1982), 328; for Thucydides, see Ehrenberg (1947), 47–53.

[157] A standard interpretation is voiced by Evans (1991), 23, "For Thucydides, imperialism was part of human nature; it was natural for the strong to exploit the weak. For Herodotus, expansionism was a *nomos*, and therefore, if we want to understand it, we should look at an empire's *nomoi*. Imperialism, therefore, fell within the field of ethnology, which was Herodotus' initial interest." Lateiner (1989), 184, sees it as part of the causal mechanism that brings Persian defeat, "When the unrestricted *nomos* of despotism contends with the restrictive *nomoi* of the little Greek states, the heterogeneous Greeks are victorious. Herodotus asks why. He seems to have found his answer in the way different political systems respond to the demands of *nomos* understood both as custom and as law. When the despot constitutes *nomos*, it is unstable and self-interested; when *nomos* is despot, the limitations provide an arena of freedom."

[158] Darius' subsequent war against Athens is waged for reasons of justice, 5.105.2. Cambyses' invasion of Egypt has three potential causes, but Herodotus prefers personal revenge, 3.1–3. Interestingly with respect to Xerxes, the causes of Cyrus' abortive offensive against the Massagetes at 1.204 are

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is equally true of the Persian *logioi* whose voices initially answer the *histor*'s question on the cause of the Greco-Persian Wars: according to them, the Greeks were responsible for the invasion because of injustices extending from the Trojan War; this pretext is neglected entirely by Xerxes.[159] Both Xerxes and Mardonius draw attention to the blamelessness of those to be conquered or already under Persian rule (7.8.γ3, 7.9.2). While Xerxes does maintain that the Athenians will merit their destruction, this is subordinate to his overweening sentiment of bringing all of Greece to heel and extending the boundaries of his empire to meet with those of Zeus.[160]

If we juxtapose the language of the king with that of his wise advisor, Artabanus, an alternative response to endemic Persian expansion emerges.[161] Artabanus plays internal historian, recounting his experiences during the disastrous invasion of Scythia undertaken by Darius and the failed mission of Datis and Artaphrenes into Attica.[162] On his reading of Persian history, the Scythians are not as powerful as the Greeks, and, a fortiori, Xerxes' attack on them could be proportionally more damaging for Persia.[163] As in Xerxes' speech, a theological argument follows this historical one, but rather than supporting a *nomos* of expansion as Xerxes had declared, the divine instead acts as a check upon it, striking down disproportionately great creatures (7.10.ε). In his ensuing attack on the half-truths and outright distortions of Mardonius, Artabanus re-translates the *nomos* of expansionism back into the self-interestedness of the Persian court. These two final points are stressed again in the scene that immediately follows, after Xerxes comes to agree with the advice of Artabanus. Artabanus again chides Xerxes for teaching his soul to be appetitive (7.16.α2: διδάσκειν τὴν ψυχὴν πλέον τι δίζησθαι αἰεὶ ἔχειν τοῦ παρεόντος: "to teach your soul to seek ever more than what it has at present") by entertaining the audiences of vicious men, who prevent him from using his true *physis* (7.16.α1).[164] This is a rare case in which

twofold – first, religious and second, historical – but in Cyrus' case this entailed (1) a belief in his own divinity and (2) in his continued successes in line with *his* past.

[159] 1.5.1. Xerxes sacrifices at Troy, 7.43.1–2, after expressing a desire to see it, but there is no reference to his presence there as part of a campaign of vengeance against the Greeks for the events at Troy.

[160] 7.8.γ1–3. Cf. Th. 2.41.4.

[161] For the differences between the two speeches, see Pelling (1991), 133; Baragwanath (2008), 243–4; Grethlein (2009), 199–200. According to Mikalson (2003), 160–1, Artabanus is a Greek actor draped in Persian clothing.

[162] At 7.18.2, he stresses the youth of Xerxes and the folly of Cyrus' campaign against the Massagetes, that of Cambyses against the Ethiopians, and Darius against Scythia again.

[163] With Grethlein (2009), 199.

[164] Scardino (2007), 353, rightly finds that Artabanus advocates a policy of "Ruhe" in opposition to Xerxes. See Clarke (2018), 236–7, on the folly of Xerxes' desire.

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Herodotus hints at the opposition of *nomos* and *physis*.[165] Whereas certain contemporary philosophers were suggesting that *nomos* operated as a force against the extremism of human *physis*, Herodotus reverses this emphasis: in Artabanus' speech to Xerxes after the council he compares the king's *physis* to the sea, the most useful of all things when not disturbed by the force of the disruptive winds. So, instead of naturalizing the imperial project as an obvious outcome of nature, Artabanus qua wise advisor treats imperialism as a corruption of the soul, in an idiosyncratic anticipation of Platonic ethics.

Artabanus' reading of Persian history and the divine forces is successful for the moment. After initially rejecting Artabanus' speech, Xerxes eventually comes to agree with it and bids the Persians to remain quiet. This turn of events must force a realignment of the reading of Xerxes' *nomos* of imperialism. Herodotus' judgment that *nomos* is king of all points to its near-gravitational force on the society that practices it. Yet here Xerxes immediately abandons his newly minted Persian *nomos* in favor of quietism, at least until he is impelled to war by the divine dream.

I should digress at this point to examine an important and widespread assertion, that the dream itself represents another instantiation of *nomos*, an interpretation that is grounded in Xerxes' identification of this tradition as aided by the divine.[166] There is no evidence in the *Histories* for divine dreams as connected to *nomos*; instead, *nomos* is almost exclusively tied to the sphere of humans.[167] Recall that on Xerxes' account, a divinity leads the Persians on and with its aid, "it turns out for the better," συμφέρεται ἐπὶ τὸ ἄμεινον (7.8.α1). The results of the Persian invasion – not to mention prior Persian history – hardly encourage identifying the Great King as correct in his assessment of the position of the divine with regard to Persia's expansion. Much more compelling is interpreting the dream not

[165] See pp. 121–22, 146–50.

[166] The misunderstanding of the divine is a common motif prior to dramatic reversal, e.g., Croesus at 1.55–6; Cambyses at 3.65.2. For an analysis of the origins of the dream and its relationship to what has preceded, see Lieshout (1970), 237–40. I am not convinced by Evans (1961), 110, who interprets the passage as suggesting that the dream means that if Xerxes does not make the campaign he will transgress Persian *nomoi*; Scardino (2007), 353, also assimilates the dream to *nomos*: "erst der göttliche Traum gibt dem persischen Nomos die Macht, Artabanos' Einwände außer Kraft zu setzen" ("only the divine dream gives Persian *nomos* the force to override Artabanus' objections"), a position he ties to Xerxes' speech at 7.50.3.

[167] The single exception to this is found in a speech given by Hermotimus of Pedasa, in which he asserts that the gods have delivered his impious enemy into Hermotimus' hands, "making use of a just *nomos*" (8.106.3: νόμῳ δικαίῳ χρεώμενοι). The speech cannot be used as evidence of the narrator's position. N.b. at 7.136.2 Xerxes makes an exaggerated claim that all *men* have conventions (νόμιμα) against killing heralds, but there is no hint of the divine even here.

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as a concrete manifestation of the divine *nomos* that drives Persia to battle but rather in the context of Artabanus' characterization of the divine when faced with an individual who "thinks big": "Do you see how the god blasts those creatures who are over the top and does not allow them to make a display of themselves, but small creatures do not provoke him . . . for the god does not allow any other than himself to think big" (7.10.ε: ὁρᾷς τὰ ὑπερέχοντα ζῷα ὡς κεραυνοῖ ὁ θεὸς οὐδὲ ἐᾷ φαντάζεσθαι, τὰ δὲ σμικρὰ οὐδέν μιν κνίζει . . . οὐ γὰρ ἐᾷ φρονέειν μέγα ὁ θεὸς ἄλλον ἢ ἑωυτόν). Xerxes' speech to the Persians well exemplifies Chris Pelling's point that the tyrant shows an inability to distinguish the boundary between the human and the divine.[168] Given the deceptive nature of the dream and its unwillingness to bring victory to the Persians, it is preferable to see the dream as connected to Artabanus' vision of the divine, who serve to check what is excessive, even in speech.[169] In an instance of narrative irony, it is Artabanus who subsequently misinterprets the divine dream in spite of his evident understanding of the workings of it. First, he proposes that the dream arose from Xerxes' preoccupation with the muster; when convinced of its divine origin, Artabanus believes it evidence of the coming destruction of Greece rather than Persia (7.18.3).

If the deceptive dream is not to be connected to the *nomos* led by the divine that Xerxes appealed to, the credibility of Xerxes' motivation as *nomos* is further compromised. Xerxes' appeal to *nomos* is not in fact stirred by his reading of Persian history but instead is a rhetorical strategy aimed at justifying his large-scale offensive as a defensible one, in line with the tendency of Persian monarchy to regard the king's will as *nomos*, as in the case of Cambyses.[170] In glossing *nomos* as a desire for more, Xerxes subtly recodes ethical values, in a further dramatization of the frayed relationship of *nomos* to justice in the context of Persian despotism and imperialism.

By crafting the forward momentum of the Persians as *nomos*, Xerxes displays a despotic tendency to unravel traditional concepts of morality in favor of his own personal legality, much as we saw Pheidippides do in the *Clouds*. Additionally, Herodotus' attention to the wisdom and practical

[168] Pelling (2006), 150–1. See also Clarke (2018), 290–3 and 298–301, who has carefully discussed the way in which Persian rulers are marked out for their excesses and for their attempts to rival the divine; she well cites Munson (2001), 185 at 300 n. 81. For "thinking big" as a species of *hybris*, see Cairns (1996), 13–17.

[169] Cf. Croesus' punishment from the divine for considering (ἐνόμισε) himself happy, 1.34.1; Aristodicus at 1.158–60; Glaucus at 6.86.γ2 seeks pardon for what he has said (τῶν ῥηθέντων) but learns that speech and action are equally offensive. For the rarity of divine anger at human *thoughts*, see Pelling (2006), 151 n. 36.

[170] For an alternative view, see Baragwanath (2008), 279.

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experience of Artabanus in opposition to the youthful recklessness of Xerxes recreates the *topos* of the young *sophos* destabilizing *nomos* when confronted with a senior figure who acts as a representative of tradition. Xerxes' rationalization of his original plan to invade Greece is couched in generational terms in the arresting metaphor "my youthful spirit bubbled over" (7.13.2: ἡ νεότης ἐπέζεσε). Youth forms the basis of Artabanus' critique of Xerxes (7.18.2). It led to Xerxes' abusive attack against Artabanus, who is explicitly termed his "elder" (ἐς ἄνδρα πρεσβύτερον).[171] This chimes closely with a fragment that may belong to Euripides' *Andromache*, in which a speaker declares that "youth exalted me, and a boldness more than good sense" (*TrGF* F 134a Kannicht: νεότης μ' ἐπῆρε καὶ θράσος τοῦ νοῦ πλέον).[172] Even more noteworthy is how Xerxes' justification puts him in dialogue with the *Clouds*, where it is the young (οἱ νέοι) who are encouraged to sharpen their tongues (1058–9) and learn the Worse Argument. Of course, when the contest over parental-beating arises between Strepsiades and Pheidippides, it too is couched in generational terms of young versus old (1391–2, 1418–19). If it is correct to view Xerxes' characterization in these terms, Herodotus' emplotment of the motivation of the Greco-Persian Wars engages with this philosophical debate and uses it to initiate the Persian war machine's momentum against Greece. The momentary success of Artabanus in dissuading Xerxes from his campaign, will, of course, be entirely undone by the actions of the deceptive dream sent to both, rebooting the doomed war and obviating the need for *nomos* as a pretext.

Conclusion

A progressive reading of the ethnographies within the *Histories* establishes an interpretative framework that translates the respect one's own society gives to its traditional norms into a respect for those of other peoples, supporting a philosophy of cultural relativism. Cultural relativism holds that all societies enjoy their own practices, with no Archimedean viewpoint from which to judge these practices in moral terms. Further, it cultivates a hermeneutic of "reading" culture from the perspective of the people who constitute it and to make sense of difference through the context of

[171] Youth in Persia is elsewhere associated with the need *for* military displays after acquiring royal power, 3.134.3, since with the aging of the mind and body, deeds too are blunted. For the theme of youth in Herodotus and Thucydides, see Scardino (2007), 377–9, 741–2.

[172] Cf. Thgn. 1.629–30 Young. For Alcibiades as the quintessential youthful rabble rouser, see Th. 5.43.2, 6.17.1; Alcibiades argues for this as a useful element to the state, 6.18.6–7.

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enculturation. Yet, cultural relativism's recognition of the arbitrary nature of tradition has the potential to threaten the social order through the introduction of revisionary *nomoi*. This consequence is dramatized in Aristophanes' *Clouds*, in contemporaneous tragedy, and in the fragments of the Presocratics who stressed the arbitrariness of *nomos* in contradistinction to the fixity and inevitability of *physis*. In the *Histories*, the problem of revisionary *nomoi* concentrates around the figure of the despot and the imperialist drive, and this complicates a reading of the work as unilaterally supportive of *nomos*. The platitude "*Nomos* is king" fails to capture the pressure put on tradition by way of the tyrannical individual or imperial *nomos*. By highlighting the instances in the *Histories* in which *nomos* is a contested concept, one that can be used as a rhetorical ploy to justify what is popularly unjust, it is possible to place Herodotus' text in a community of thinkers exploring the power of conventional versus subversive ethics. The individual ruler or the empire's creation of its own ethics is contrasted with the portrait of custom, tradition, and law as a popularly sanctioned phenomenon.

The prominence of relativism in the *Histories* carries implications for our understanding of Herodotus' historical project. First, it shows that Herodotus' interrogation uses ethnographic case studies and the rise of the Persian Empire to demonstrate the validity of cultural relativism and the deleterious effects of subjectivism. As a reminder, cultural relativism highlights the diversity of norms, rejects any absolute perspective from which to view these norms, and treats them as having validity for the society in which they obtain. Subjectivism, meanwhile, treats the individual as the measure for human behavior, rather than the culture. The ethical questions raised by the latter phenomenon are highly politicized; the Persian Empire and the Great King are potent illustrations of the perversion of custom and law. This is not to suggest that Herodotus emerges as an unyielding critic of Persia. His depiction of the Persians avoids such gross caricature. Next, the debate on relativism is of real consequence for our understanding of the wider aims of the *Histories* – the challenge to *nomos* plays a role in *the* key causal moment in the narrative – Xerxes' war council. In glossing the motive force of Persia's expansion as *nomos*, Herodotus' Xerxes embodies the youthful and subversive *sophos* familiar from comedy and tragedy and from previous Persian monarchs in the *Histories*, intent upon disturbing popular morality with *nomos* as a screen. This paradigm situates Herodotus alongside the sophistic and Socratic thinkers in the fifth century for whom the variability of cultural norms could foster dangerously appetitive individuals. This is precisely the

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language that Artabanus uses in retrospectively depicting the Council: he describes his own speech as a failed attempt to instruct Xerxes "how evil it is to teach the soul always to seek more" (7.16.α2), a reading of Xerxes that implicitly rejects treating his *nomos* as an accurate reflection of Persia and instead repositions it as the ethics of a corrupted individual.

Interpreting Herodotus among Presocratic thinkers whose investigations focused upon questions of ethical importance moves us well beyond the platitude of Herodotus as a philosophical thinker in terms of his empiricism. Much as the narrator vies with the natural scientists in his discussion of the behavior of the Nile, so too he reveals a fluency with the more abstract questions of the New Learning from this period. The *Histories* engages profoundly with the philosophy of cultural relativism and *nomos* and, in the context of Persian hegemony, explores the fraying of *nomos* as an index of a society's own justice. In this way, Herodotus goes beyond identifying *nomos* as a cultural marker particular to a given people to develop the concept into a complex, plastic one with the capacity both to structure and unravel human society.

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