

Preface

Anthroponomikos

1. The *idea of nomos*

At the opening of (Ps.) Plato's *Minos* at 313a, in his dialogue with an unnamed Athenian companion-student (*hetairos*), Socrates asks: ὁ νόμος ἡμῖν τί ἐστίν; ('What, for us, is *nómos*?').¹ The companion responds by asking in turn: τί οὖν ἄλλο νόμος εἶναι ἂν, ὦ Σώκρατες, ἀλλ' ἢ τὰ νομιζόμενα; ('What else is *nómos*, Socrates, but the *nomizomena* [νομιζόμενα])?' The *nomizomena*, at this point, may imply whatever is 'recognised' as such, 'believed to be', 'habitually' used, or 'accepted' as *nómos* (and, possibly, what is 'prescribed by *nómos*'; 313b), hence, arguably, indicating a multiplicity of *nómoi* (plural of *nómos*). An issue, at first sight, with the companion's preliminary answer in the form of a question is its self-referential character. Socrates responds by telling him that, if that is the case, then (for the companion) '*logos*' must analogically be 'what is said', 'sight' must be 'what is seen' and 'hearing' 'what is heard'; and then he asks: 'or is it that *logos* is distinct from what is said, sight from what is seen and hearing from what is heard?' (313b–c). A related issue that is implied in the dialogue is the uncertain sense of the *nomizomena* and, by extension, of *nómos* itself, given that *nómos* can range widely from, for instance, a sense of habit, use and opinion through to custom, norm or 'law', among more besides – as

¹ Later in the dialogue, the oldest (divine) *nómoi* are named as those practised in Crete, which the Greeks, in general, are said to use. In addition, the oldest law-giver king is named and praised: Minos. The authorship of the dialogue remains disputed; on Ps. Plato's *Minos*, see, indicatively: Strauss (1987); Cobb (1998); Rowe (2000); Lewis (2006); and Lindberg (2007).

Preface

will be seen later. What may appear as an early (too early) self-referential juridical inquiry and, for the companion, with particular emphasis on a *nómos* that is 'posited', is, instead, for Socrates, at least in part, a focusing of attention on the multiplicity that characterises the uses of the word *nómos* and its family of words (i.e. the *nomizomena*). Indeed, it is this multiplicity of uses that Socrates appears to presume in order to evoke his eventual definition of *nómos*.

In this study, I examine in some detail the uses of the term *nómos*, as well as those of the *nomizomena* (from the verb *νομίζω*, *nomizō*), but it is worth noting provisionally that the *nomizomena* can refer to a 'traditional or accepted way or view' (of living or doing something), in which sense there is some proximity to – though non-identification with – *ēthos* ('habit or custom'). Equally, the wide range of uses that *nómos* can refer to is, in fact, indicated by Socrates when he later mentions medical, agricultural, gardening, cooking and political (administration) *nómoi* (316c–b) along with 'the *nómoi* of *mousikē*', the '*nómoi* of the gymnast' and those of 'the shepherd' (317e–18a). All of which could be said to be related, more or less, to an act of 'distribution-sharing' or 'arrangement' (for example, the way a gymnast 'distributes' the parts of the body).² Crucially, the act of 'distribution' is not metaphoric in these examples, and we therefore need to listen to occurrences of these archaic (and classical) uses in their everyday – concrete – sense(s).

It could be that, at the start of the dialogue, there is already discernible an etymological inquiry into the word *nómos*. However, there is more to it than etymology (or, rather, there is more to etymology than we commonly appreciate).³ For Socrates, *nómos* and the *nomizomena* are quite distinct, even if in some sense also related. It could be said that their relation-

² Such width may also be implied by the fact that the word *ἀνομος* (*a-nomos*), which signifies, to some extent, the opposite of *nomos*, or, better, its lack (in the sense of 'inhumanness', 'disregard of sacred social norms/customs'), is only encountered once in Hesiod (*Th.* 307) and can then be observed from the fifth century bc onwards. For a survey of its uses, see Orrù (1985).

³ See the discussion in Cobb (1988: 203, n. 4). See also, crucially, the rethinking of 'etymology' in Pl. *Crat.*

ship is, in fact, a dynamic (*dunamis*) one.⁴ In what sense is this so? Later in the dialogue, Socrates states that the question that needs to be asked is: in what way does *nómos* become known? Is it an experience akin to the way in which an *epistēmē* ‘discovers’ things (or the way medical practice ‘discerns’ what is ‘healthy’ and what is not) or, alternatively, is it similar to what the seer ‘determines’ as regards what the gods ‘think’, given that each *technē* (if *nómos* is one)⁵ aims at the *εὔρεσις* (*heuresis*, ‘discovery’) of what is true (314b)?

Socrates’ companion responds to this by stating that, for him, *nómos* is, in fact, the *ψηφίσματα* (*psēphismata*) and the *δόγματα* (*dogmata*) of the polis; effectively defining *nómos* as the *doxa* and the *dogma* of the polis (314b–c). Socrates, however, challenges this definition and claims that *nómos* is not ultimately a matter of *doxa*, or the *dogma* of the polis, but that, instead, its *dunamis* lies in the ‘revelation’ of the true (*ἀληθείας*, *alēthēs*) and good *doxa*; the ‘highest’ *doxa* that it is, in fact, preferable to ‘use’ (*χρηστέη*; *chrēstē*; 314e). Thus, Socrates defines *nómos* as follows: *ὁ νόμος ἄρα βούλεται τοῦ ὄντος εἶναι ἐξεύρεσις* (‘*nómos* desires to be the revelation/discovery of what is’, namely ‘the truth of being’; 315a).⁶

It is important to note that the word used to describe what one does with a *nómos* is the verb to ‘use’ (*chrēsis*).⁷ It is in the use of a *nómos* that a *nómos* is revealed to be good or not good in the first place. Thus, in this sense, it could be said that ‘use’ is the experiential plateau in which what is (‘the truth of being’) can be revealed or found. In this manner, the *idea* (*ιδέα* from *ιδεῖν*, *idein*: ‘to see’; *εἶδος*, *eidos*: ‘form’) of *nómos* is the experience of its use(s). It is possible therefore to speculate from the outset that the experiential ‘form’ of a *nómos* is

⁴ See Cobb (1988: 203, n. 5), who describes this as a ‘function’ or ‘capacity’. It is worth noting that all the examples of *nómos* that the companion refers to in the dialogue are related to ‘rituals’ (i.e. sacrifices, burials, and so forth).

⁵ It is not clear whether this is a proximate reference to a *technē*, such as the *technē nomothetikē* defined in Arist. *Eth. Nic.* 1180bff.

⁶ The emphatic *ἐξ-εὔρεσις* [*ex-heuresis*], ‘out of invention’ or ‘discovery’ but also ‘finding’, is a classical use, prevalent in Plato. See also the distinction with *διάθεσις* (*diathesis*) in *Ph.* 236a.

⁷ On the most compelling philosophical genealogy of *chrēsis* that I presuppose here, see Agamben (2016a).

Preface

a *dunamis* (power) as distinct from what is 'held' (actualised) as a *nómos* (the *nomizomena*) in each instance. 'Transcendent' to the actuality of this or that *nómos*, however, is only the *dunamis* (or potentiality) of *nómos*, which does not lie outside of its actuality, but rather is immanent in its use(s).⁸ In the dialogues, this peculiar 'desiring' *nómos* is, in part, personified in Socrates' definition, since *nómos* lies within the very uses of the mortals. Its form, in this manner, is inseparable from 'living' or 'using'. It is in this sense that I refer to it as the *idea* or experience of the *anthroponomikos*.

Nómos is, in a philosophical sense, simultaneously the un presupposable (*ἀνυπόθετον*; *anhupotheton*) of the *Republic* (510b): that is, the *idea* (even though in the *Minos* the *idea* is never mentioned as such). What is revealed in and by a *nómos* is the appearance of 'what is', and this 'searching out' or 'discovery' (*ἐξ-εύρεσις*, *ex-heuresis*) takes place each time according to the *dunamis* of *nómos* to indicate the intelligibility or potentiality (the *idea*) of 'what is'. In this reading, the *idea* is, crucially, not another intelligibility or reality, but the potency (the experience of intelligibility) of 'what is' – 'truth' or the 'good', the 'arrangement', and in this sense 'distribution', or use of things. The Platonic *anamnēsis*, in this way, does not turn towards a 'transcendent' past or to a separate world of the *Ideas* in order to locate 'true being', but to the appearance (the power of 'arrangement' or 'distribution') of what appears – *its idea, which is its nómos*.⁹

2. Pré-droit

With regard to the classical period, Karl-Joachim Hölkeskamp writes:

The general framework of notions and concepts applied to the history of early Greek law is to a great extent extrapolated from the sophisticated classical (and modern) ideas on law, justice and their origins, which are themselves the

⁸ On potentiality and the reading of Aristotle's *dunamis* that I presuppose here, see Agamben (1999a: part III).

⁹ I borrow this particular philosophical understanding of the 'Idea' from Agamben (1995).

Preface

result of a long historical process. Consequently, such a framework cannot provide a satisfactory instrument to conceptualize and explain the specific ‘pre-’ and ‘proto-legal’ conditions and the concrete social, institutional and intellectual impulses which set the process in motion in the first place and determined its direction – the process in the course of which, in a long series of small steps, a differentiated set of legislative institutions and procedures of law-making and also a sophisticated idea of law as the basic principle of life in the polis came into being and eventually evolved into later, more complex forms. (1992a: 59–60)

Without directly being concerned with ‘sophisticated Greek law’ in this study, or, in fact, with the classical period, Hölkeskamp’s critique applies to the way in which archaic ‘foundations’ for/of Greek ‘law’¹⁰ are identified, as well as, more generally, to how the word ‘*nómos*’ is to be understood in the midst of its polyvalent forms and uses, which, in fact, do not lend themselves to universal definitions, or presuppositions of some self-evident sense of ‘law’; an ‘idea of law’ into which frequently, as in Hölkeskamp, *nómos* is presumed to ‘eventually’ or ‘naturally’ ‘evolve’. Instead of examining the particular and relatively well-known developments during the classical age and the specific reforms with regard to ‘law-making’, in this study I focus on the polyvalent duality of *nómos* and *nomós* (two words and their families) in the preceding centuries. The intelligibility of such an inevitably (in part) speculative cognition of what

¹⁰ On Greek law(s) in its/their various forms and periods of ‘development’ the literature is constantly proliferating, as well as renewing its methodologies and interdisciplinary approaches. See, for instance, Gernet (1917; 1938; [1955] 1979; [1968] 1982; in English in 1981); Wolff (1946); Jaeger ([1947] 1960); Jones (1956); MacDowell (1978); Cantarella (1979; 1994); Biscardi (1982; 1999); Garner (1987); Cohen (1989; 1995); Todd (1992); Foxhall and Lewis (1996); Thomas (1996); Thür (1996; 2003); Hölkeskamp (1999); Hunter and Edmondson (2001); Papakonstantinou (2002; 2004; 2008); Harris and Rubinstein (2004); Gagarin and Cohen (2005); Martini (2005); Harris (2006); Lanni (2006); Stolfi (2006); and Lewis (2007). On writing and law, see, indicatively, Hölkeskamp (1992a; 1992b; 1999; 2002); Camassa (1988; 1996; 2011b); Thomas (1996); Faraguna (2007); Gagarin (2008); and Hawke (2011).

Preface

can be called ‘the uses of *nomos*’ during the archaic period becomes ever more difficult to discern when the language of many interpreters itself appears to be already ‘juridified’.¹¹ In the Western (juridical) modality of cognition, it seems that ‘always-already’ the terms used to describe what pre-dates the so-called juridical forms and actions are those of the juridical (or, rather, fictional or magical) *dis/juncture* between word and action and, more widely, the perennial juridico-philosophical enigma of the *dis/juncture* between ‘language’ and ‘reality’.¹²

In *Droit et société dans la Grèce ancienne*, the seminal philologist and sociologist Louis Gernet (1882–1962) defines *pré-droit* (pre-law) in relation to archaic ‘law’ as follows:

Before coming to constitute an independent technique, law is pre-moulded in certain traditional procedures in which gestures and *verba* have a force that one cannot yet call juridical, as they lack specialization of time and space, personnel, and means of operation. Their meaning and effects, however, are analogous to those that would make themselves in actual law. ([1955] 1979: 2)¹³

Hence, the Homeric ‘pre-juridical’ milieu is characterised by a certain binding reciprocity, intense ritualisation, the sacred process of the oath and a collective or ‘public’ nature of ‘pre-juridical’ action, all of which are marked by a certain effective

¹¹ For engaging introductions to the history of the archaic age, see, for instance, Snodgrass (1980); Murray (1993); Hall (2006); and Osborne ([1996] 2009).

¹² In this regard, the work of the one of the most important legal historians and thinkers, Yan Thomas, in particular relation to the Roman tradition, remains paradigmatic. See, for instance, Thomas (2011; 2015). However, archaic (or classical) Greek ‘law’ should not be read through the lens of the Roman tradition.

¹³ It is worth noting that Gernet presumes, to an extent, that the ‘meaning and effects’ of the ‘pre-law’ means are analogous to ‘legal’ ones ([1948–9] 1951: 21–119); this should be read in conjunction with *Le temps dans les formes archaïques du droit* (1956: 379–406); see, further, Gernet (1917) and, handily, the later anthology ([1968] 1982) that contains reprints of the earlier-mentioned works. Finally, for a brief introduction to Gernet’s work in English, see Humphreys (1971) and Taddei (2000; 2001).

Preface

performativity (ultimately of 'law').¹⁴ Above all, the archaic period is characterised, for Gernet, in this regard, by the indiscernibility of 'religion-magic' and 'law'. Thus, in *Droit et pré-droit en Grèce ancienne*, Gernet writes:

The symbols of pre-law are essentially effective: the hand that gives or receives; the staff that asserts power or relinquishes it or confers it; the imprecatory speech, the gesture or posture equivalent to imprecation . . . everything that acts immediately and in virtue of its own *dunamis* [power]. ([1948–9] 1951: 104)

In Gernet there persists, however, a liminal sense of a process of transformation from 'pre-legal' rites to more 'abstract' or elaborate forms of (legal) action and decision; a pre-legal ritual-language (different means) that transforms into a legal language (same effects). The difficulty of such 'translation' lies in the inherent deposition and transposition of any language by the language that performs its description as such. In a different context but to similar effect, the Polish anthropologist Bronislaw Malinowski, who founded the 'anthropology of law', wrote in the early 1920s: 'In looking for "law" and legal forces, we shall try merely to discover and analyse all the rules conceived and acted upon as binding forces, and to classify the rules according to the manner in which they are made valid' (1926: 15). A similar intention, but still predetermining the process of discovery or translation of the 'pre-legal' on 'rules', can be observed in the 'binding forces' and the process of 'validating' them; a self-evidently, even if sensitively, juridical model of cognition. It is, of course, undeniably complex to write of ancient cultures and practices, but the attempt is rendered ever more cumbersome when what is said to precede the 'legal' is already marked by it, which could be called – recalling Lucien Lévy-Bruhl's term ([1910] 1960) – the subjection to the 'frontier' of law.

Michel Foucault, in turn, seems to take for granted Gernet's notion of 'pre-law' in, for instance, the *Leçons sur la volonté de savoir* ([1970–1] 2011), in which he adopts Gernet's

¹⁴ See Cantarella (1979; 1987; 1994).

Preface

'pre-juridical' description of the Homeric oral tradition in order to develop, among other matters, a genealogy of judgment and *krisis* (ibid. 171). Foucault is concerned only in part with the late archaic and mostly with the classical period as to the 'democratisation' of the so-called 'legal process', with particular regard to the ritualisations of 'popular religions' (such as, crucially, for him, the cult of Dionysus; ibid. 163–6).¹⁵ Proximate to Foucault's work, Giorgio Agamben in *The Signature of All Things – On Method* (2009) turns to Gernet's distinction between the 'pre-legal' and the 'legal', in order to highlight the caution required in the drawing of such a distinction in the first place. Agamben proposes that when such a distinction is made, using the terms 'law' and 'religion' (even while considering them to be indistinct), and in order to describe what pre-dates 'law' and/or 'religion', it is best to avoid the antecedent terms and instead explicitly mark what lies 'before' as an 'unknown X': 'In such cases, one must take care not merely to project upon the presupposed "primordial instinct" [Prodi 1992] the characteristics defining the religious and political spheres known to us, which are precisely the outcome of the split [e.g. between 'law and religion']' (2009: 5; my comments). What lies before the 'law', as we (re)cognise it,¹⁶ is not a 'more ancient law'; similarly, what lies before 'religion' is not some 'more primitive religion' (ibid.). When, instead, we proceed according to the presumption of an 'unknown X', our archaeological markers must suspend the pre-emptive marking of predicates that 'we commonly ascribe to religion and law' (ibid.). It would, thus, be misleading, for my purposes, to consider this 'transformation' or 'development' as, for example, some kind of progressive movement from a so-called *nomocracy* to a *democracy*, or from *physiocracy* to *nomothesis*. It would be equally misplaced to suppose that the Greeks at some point lifted the veil of 'religious' rites and found underneath it the autonomous and liberating 'secular' law-giving of the polis or, lastly, to presume the 'developmental' transposition of cognition from

¹⁵ See also Foucault ([1970–1] 2011: 143–60; 2014, Lectures: 10–11) for the developments with regard to *nomos* and *nomisma*.

¹⁶ Although 'our' own (re)cognition of 'law' is anything but simple or universal.

the obscurity of (oral) poems to the lucidity of (written) law and prose (including that of Plato's 'philosopher-king').

3. Preliminary linguistic aspects

Consequently, it is important to observe in some detail the uses of the verb *nemein* and its family of words (including *nómos*) in the extant literary evidence amidst the poets and the early philosophers during the (late geometric and) archaic age (c. 900–480 BC; notably, with some reference to earlier elements and some retrospective references to archaic uses as met in the classical age, 480–323 BC). To do so, I shall juxtapose untranslated all the key terms as I attempt to pinpoint their interpreted uses as tightly as possible, as well as pointing out the indistinguishability of commonly understood separable domains – for instance, 'religion', 'law', 'culture' and 'poetry'. The aim is to allow the singularity and complexity of the rich literary material to evoke an affirmatively inconclusive line of questioning.

This study is, in one sense, about two words, or rather a family (or two) of words. By its nature, it is inevitably a fragmented juxtaposition (rather than a mapping) of the uses of the words *nómos* and *nomós* and the family of words to which they belong, subject to a number of evidentiary and other limitations. In another respect, this study is about the *idea* of the words *nómos/nomós*: that is, about their uses, which cannot be separated from the word(s) and vice versa. We can call this method, if it is one, a genealogy, if we agree that words do not have 'core' meanings, but rather uses (and that these uses cannot be distinguished from the existence in which they are experienced). At least for us, in contrast perhaps to the experience of the ancients, some of the uses of the word(s) that will be examined in this study may be, at first, surprising (at least to non-specialists), and some will have to remain so, given that it is not possible to establish some kind of 'historical causation' among them with any certainty. Yet we can at least hold to one premise: the words *nómos* and *nomós*, in their numerous uses, are (among other places) prevalent in the normalcy-setting and *ēthos*-transmitting Greek poetry and thought from at least Hesiod onwards, while their experiential milieux stretch, presumably, much further back.

Preface

The second hypothesis is that in the most ancient literary sources the words *nómos* and *nomós* mean many things other than 'law' (and for the most part they do not mean 'law' at all). As is quite well-known, there were many words to signify 'norms' or 'rules' in ancient Greece, but prior to the classical period there is no word (let alone 'concept') that signifies what we generally appear to understand in the modern sense(s) of 'law'. It is, thus, highly problematic, as will be seen, to even refer to what precedes this 'law' with equally modern (legal) terms such as 'customary law', 'natural law', 'divine law' and so forth. It is doubtful that we will ever come to a conclusion as to how a few hundreds of years of use of the families of the words in question, through no apparent linear 'development' or 'progress', 'led' to (also) a sense of 'law' that would simply be added to *nomos*, before it also came to denote specifically 'written law', more explicitly during the classical period. It can be noted, for instance, that written 'laws' or 'norms' had already appeared by the mid-seventh century BC (Thomas 1996), but we have no evidence of the term *nómos* being used to describe them (Hölkeskamp 1992b).¹⁷ My approach is not that of a search for a strict definition or justification, in any case. I shall, instead, note the persistent, overlapping and renewed uses of the words in question in what forms a broad spectrum of experiences on the basis of the extant literary (and predominantly poetic) sources that act as relative evidence in the absence of other indications, while situating these uses to the extent possible within the social milieux in which they occur.

Notably, while some are more exuberant than others in their compositions (for example, Pindar), the poets, as much as the early philosophers, express themselves, to a significant extent, in the everyday language of their audience, thus providing some relative insight into their use(s) of vocabulary in the archaic polis, and perhaps beyond. The most extensive study of the linguistic history of the uses of *nomos* and its family of words remains that of Emmanuel Laroche (1914–91), who was director of studies at the *École Pratique des Hautes Études* between 1954 and 1982 and whose work

¹⁷ See Faraguna (2007).

Preface

forms a seminal starting point for this study. For this reason, it is useful to summarise some of the parameters that Laroche elaborates for the study of the words in question in his *Histoire de la racine νεμ- en grec ancien* (1949). Laroche analyses the root *nem-* across linguistic levels (Homeric, post-Homeric), epochs ('primitive', archaic, classic, Hellenistic) and dialects (Attic, *koinē*, Ionian), without losing sight of the predominantly oral transmission of tradition(s), as well as the later, arguably significant, impact of writing and of an increasingly complex formation and re-formation of the polis.¹⁸

From a morphological perspective, Laroche examines the Indo-European root **nem* and identifies three relatively distinct series that characterise the structure of the root, which is for him 'the degree zero': the Homeric *νεμ-* (*nem-*), *νεμε-* (*neme-*) and *νεμη-* (*nemē-*) (1949: 53). It is worth noting that grammarians have indicated two Indo-European roots: **nem1* and **nem2*. First, there is the root **nem1* from which, in Greek, we derive the verb *νέμω* (*nemō*) meaning 'to assign', or 'to allot' (Laroche: 'to distribute'), but not 'to take' (**nim*), or 'to divide'. At this point it is worth stressing that the verb *nemein* entails such a wide semantic variation that the question of its root cannot be definitively clarified (Frisk 2: 302). Second, the root **nem2* appears to be unrelated to *nemein* in that it is understood to signify 'to bend' and, for some, appears to be linked to **nemos* ('wooded pasture, glade, grove'). The latter is an unclear hypothesis (later rejected, for instance, by Émile Benveniste) which is largely determined through non-Greek sources (Sanskrit *námati* 'bow, bend'; Proto-Celtic **nem-eto-* 'sacred grove, sanctuary'; and Lat. *nemus*, 'sacred grove' or 'holy wood').¹⁹

More importantly, according to linguists, from the root **nem*, in Greek there derive two verbs. For Laroche, the most ancient and persistent meaning of the verb *nemein* (*νέμω*, *nemō*) and *νωμάω* (*nōmaō*), along with a wide family of words, is that of a certain kind of 'distribution': that is, the concrete act of 'distributing', in the sense of 'allotting' parts or 'dealing

¹⁸ See, for instance, Nieddu (1982); Havelock (1986); Harris (1989); Powell (1989: 321–50); Wachter (1989); Thomas (1992; 1995b); and Svenbro (1993).

¹⁹ I return to this in Chapter Three.

out'. As is evident in the Homeric uses that I examine in some detail, a most prevalent use of *nemein* (in the active mode) is the concrete action of a 'ritual' distribution-sharing of food to guests at a feast following a 'sacrifice'.²⁰ In this case, we can test a key hypothesis that a/the primary milieu within which the verb's uses are expressed is that of 'ritual' worship (or, as it is often described in the literature, anachronistically, while for modern convenience, 'religion'),²¹ and this may be markedly so if such a 'ritual distribution-sharing' can be said to remain constant in Greek antiquity. While, with good reason, Laroche holds to this semantic line, it remains hard, if not impossible, to establish with absolute certainty which particular sense or use among many is primary (chronologically, morphologically and semantically). In addition, while the uses under examination are intimately linked to concrete actions, this does not mean that rich metaphoric, and in some sense 'abstract', uses are not coexistent subject to poetic invention and popular use and frequency. In fact, this is so to such an extent that the sense of the distribution of *μοῖρα* (*moira*, 'fate', 'portion', 'destiny'), as will be seen later, as well as the uses of *νέμεσις* (*nemesis*), all relate, to one extent or another, to the intimate family of words and uses of *nemein*.²²

Along with the above-mentioned senses, we also meet a variety of 'pastoral' uses of *νέμω* (*nemō*), whether directly or proximately. For Laroche, some of these uses are secondary (for example, in relation to *nemesis*), but one (pastoral) sense of the verb is indicated already in the passive mode of the ancient *νέμομαι* (*nemomai*). Whether there are, in fact, not one but two separate semantic branches (*nem-* and *nom-*) remains in dispute (Beekes 1885), but the connections are close enough to indicate a relative (though distinct to some extent) development of the uses. While Laroche is critical of pastoral derivations in the sense of an 'allotment' or 'distribution of *moirai*' (plural *μοῖραι*), or 'lots' of land, the varied uses may be relatively close semantically, as well as historically. That the 'pastoral' sense of *nemō* is located within the passive

²⁰ I examine these in more detail in Chapter One.

²¹ *Nomos* as a personified deity can be seen in the Orphic *Hymn to Nomos*, as 'worshipped and sung'; see Athanassakis and Wolkow (2013).

²² See Chapter Five.

Preface

mode *nemomai* may be in itself instructive, since it later attains the signification of a certain sense of 'enjoyment', 'holding', 'possessing' in the wider, but concrete, plateau of 'living, inhabiting and occupying'. For my purposes, however, it is not a question of strictly separating 'domains' of different uses, or unfeasibly insisting on strict distinctions between the concrete and the more 'abstract'.

The whole history of the uses in question is, from the start, subject to multiplication, extension, 'abstraction' or metaphoric – and more generally, predominantly, poetic – uses. Indeed, this is also the case for Laroche who maintains that the 'centre of gravity' is that of the act of 'distribution' or 'dealing out', while admitting that there remains constant alteration amidst the relevant uses and, in particular, within a language (in its numerous dialects) that is particularly dynamic, localised and fluid. We shall see how the verb *nemō* will acquire the sense of 'to dominate', 'to be a master', in the poets in particular, and how a seed for a sense of 'government' ('management, administration') becomes available quite early on, before it becomes popular with the orators and the philosophers of the classical period. As with the function of *nomaō* (i.e. 'to handle'), *nemō* comes to signify 'power' ('possessing', 'being the master of') which is linked to the milieu of worship. Yet when so used, it is still the power of a certain act of distribution (in agreement with Laroche) that is implied and, even in later times, the ancient sense is hardly eclipsed. It is in the classical and Hellenistic usage(s) that the notion of 'administration' or 'management' will become more pronounced and will also take the forms of common composites (such as the *oikonomos* and *oikonomia*). Yet whatever the case, as we shall see, these uses will be prevalent in poetry and beyond, and thus not limited, for instance, to a 'juridico-political' domain (I observe this in particular in relation to Pindar and some of the tragedians – especially, Aeschylus).

In addition, it is hard to know whether the pastoral senses of 'to graze', 'to live' and 'to inhabit' develop as early as some of the other uses that are more directly linked to the acts of different kinds of 'ritual distribution-sharing', or not. Yet some relationship between them appears plausible on many occasions, and this may be further due to the complex

derivations that take place in the transition from the active to the passive mode (or in fact the elimination, in some instances, of the passive mode entirely, as in the Attic). After all, some related proximate sense of 'living' or 'inhabiting' is already present in Homer. The different, but linked, uses need to be noted further, in relation to how – in different regions and amidst different dialects – certain uses prevail over others. For instance, in the Attic, as Laroche showed, a sense of ritual distribution-sharing remains evident in later references to the earlier Homeric uses; meanwhile, other uses are not as frequent in the presence of new practices of administration, such as the development of uniform practices of 'inheritance' and so forth (1949: 25).

Next to the act of 'distribution-sharing', we also meet a varied 'pastoral' use, as in 'to graze' (in the active) and 'grazing' (i.e. animals, in the passive, though with metaphoric uses also as to humans). The two are perhaps separable while clearly remaining in some proximity (or at least, enough so for the poets to articulate it). Furthermore, the extension of the particular pastoral sense to mean 'to devour' will also be evident in the use by Hippocrates in medical practice (and perhaps earlier too). In addition, early on, some degree of 'abstraction' extends the uses of the *nemō* family of words to a certain sense of 'opinion', 'recognition', 'belief', 'classification', 'ordering', 'thinking' and so forth (notably with regard to the uses of *nomizō*). Later, though it seems not before the fifth century BC, it may also be linked to *nomisma* ('currency', in a political sense).²³

The 'development' of the said uses is not, as I have already noted, linear or progressive. For example, some of these uses will be viewed as archaisms during the classical period, while others may flourish further. Nor are the uses restricted within the verbal forms and their immediate derivations. A rich range of composites evidences a complex extension of uses to signify, for instance, 'association', 'adaptation', 'observation' and so forth. Philosophers will play a significant role in the varied uses in question, starting, as far we know, with

²³ See Arist. *Pol.* 1257 b11 and *Eth. Nic.* 1133a30; Laroche (1949: 234–8); and Seaford (2004).

Preface

Heraclitus;²⁴ but also including later philosophers – to whom I will refer occasionally, such as in relation to the remarkable fact that Aristotle will define ‘justice’ (*dikaíosunē*) as a ‘distributive disposition’ (for example, in *Eth. Nic.* 1130b30), and Plato, who links a ‘distributive’ sense between mathematics, music and the polis, as well as coupling *νωμῶ* (*nōmō*) to *σκοπῶ* (*skopō*, one of the ‘visual senses’) in the *Cratylus* (at 411d), which in fact connects, henceforth, the *nemein* family with *σκέψις* (*skepsis*) and *φρόνησις* (*phronēsis*).

For Laroche, the dual semantic roots of the family of words in question are summarised in the act of distribution-sharing and the sense of the pastoral. While this may indeed indicate an isolated group with a different root (*nom-*; Beekes 1885), Laroche accepts that they are both early and linked, while – in time – they are reinterpreted, whether towards semantic limitation or expansion. In this regard, the most famous of the *nemein* family of words is precisely a key matter of interest: *nómos*. In fact, while some legal historians (and not only them) are often misled when they simply consider *nómos* as in the sense of *nómos*-‘law’, the starting point towards a preliminary clarification, in the field of (ancient) legal history, is the archaic coexistence of not one but two *nomos* words (later differentiated by accent – oxytone and paroxytone – and uses).²⁵ As Laroche has shown (1949: 116–17), it is likely that it is the oxytone *nomós* (*νομός*) that was ‘primary’, indicating at its root pasturage in an unlimited space (i.e. in undivided land), thus not falling under the semantic root of an act of ‘distribution-sharing’, or at least not directly in the sense of ‘parts’ or ‘shares’. In addition, the symbiotic word *νομή* (*nomē*) may be a good illustration of the way in which *nomē* is part of ‘habitable land’ (with a local emphasis) and

²⁴ See Chapter Seven.

²⁵ The terms used by the Greeks for these accents are *οξύς* (*hoxus*, sharp, rising) and *βαρύς* (*barus*, ‘heavy, falling’); these are different in kind, but the Greeks did not necessarily consider words marked by either as opposites. The marking of the accent, the *τάσις* (*tasis*, ‘stretching’), is musical (see *Pl. Rep.* 349e); and see, further, the analysis by Davis (2006). The accentuation I use here to mark them is: *nómos* and *nomós*. It is worthwhile noting that the early Greeks did not use diacritics. It should finally be noted that in the rendering of the phonetic transliteration of the ancient Greek texts I have omitted the indication of the other accents.

Preface

only much later an 'administrative province' (a sense, in fact, that can still be met with in modern Greek). It is, however, presumed that, early on, *nomós* does not designate anything other than a pasture for animals, or a habitat without limits for human beings (Laroche 1949: 119, n. 18).

In the later 'juridico-political' sense(s), it is perhaps possible that the earlier senses get mixed up in their uses by philosophers and orators, in particular, although possibly the earliest sense, for Laroche, remains that of an act of distribution (without a sense of formal appropriation or a 'juridical', or other, sense of uniform or equal 'division'). The particular function of the *Nóμιος* (*Nomios*), already so in Homer as we shall see, is pastoral-worship-related and not 'juridical', like that of the *νομεύς* (*nomeus*, shepherd). It is much later, in the poets and the philosophers, that these will be likened to the *basileus*, or tyrant, as in the iconic expression of the 'shepherd of the people', arguably fusing the two senses of 'to graze' and 'to distribute' ('power'; 1949: 119).²⁶ When we encounter, furthermore, the late derivation in Plato's *Politeia* (266e) of the *ἀνθρωπονομικός* (*anthrōponomikos*), it contains a connotation of a 'right' and 'just' partition, in the sense of 'distribution-sharing', that yet still links with the ancient uses, even though it has by the fourth and fifth centuries BC become a philosophical and poetic extension that is not met in the long history of the uses examined in this study. *Νομός*, *νομή*, *νομεύς* [*nomós*, *nomē*, *nomeus*], then, but also *νομᾶς* (*nomas*; including a sense of the 'nomad'), share a (perhaps pastoral) sense in common from early on, and it is only in the later Attic that a semantic and rhetorical relation to the family of *nemō* (in the sense of 'distribution', 'dealing out') is explicitly expressed. These two key senses of the verb *nemō*, arguably, coexist. However, I shall question the extent to which they are proximate in their use(s) when observing how the early Greeks raised this question themselves. If some speculation can be afforded, a working hypothesis would be that it appears that there is a wide variety of uses wherein the family of the *nemein* words relates in some sense to an allocated way of life or being, a way of acting properly and enjoying or using things or 'oneself'.

²⁶ Perhaps this is where a trace of the later shift from 'being a power' (*dunamis*) to 'having a power' takes place, too.

Preface

Now, for Laroche, the sense of the paroxytone *nómos*-‘law’ (*νόμος*) is secondary, though significant in the classical period in particular. The suggestion that *nómos*-‘law’ is directly derived from the sense of ‘distribution’ is not necessarily convincing or specific enough in terms of the complex historical, morphological and semantic ‘evolution’ of the word it presumes (1949: 164). Yet it may be possible to articulate and speculate some such link. Nonetheless, it is important first to distinguish this use of *nómos*-‘law’ (whatever sense of ‘law’ is meant in such uses) from the other much earlier attested uses and related ‘legal’ words that belong to a certain ‘worship–political’ milieu.²⁷ One such is *rhētra* (ῥήτρα; the ‘pronouncement aloud’), which signifies a verbal convention that is associated with ‘law-making’. Another is *thesmos* (θεσμός), arguably from the root τίθημι (*tithēmi*, ‘what is set’), with wide variation in the Dorian, Locrian and Boeotian *τεθμός* (*tethmos*), Locrian *τετθμός* (*tet-thmos*) and Tegean *θεθμός* (*thethmos*). This is the name that, for example, the ‘laws’ of two famous early ‘law-givers’, Dracon and Solon, will take, while at the same time the term has a complex history that exceeds the archaic period. Yet another is the orally transmitted customary and divinely ordained pronouncement of *Θέμις* (*Themis*) (Vos 1956). *Themis*, already found in Homer (and prevalent later among the tragedians), can be interpreted as indicating ‘divine ordinances’, a ‘ritualised’ social function, setting ‘rules or conventions’ among mortals (Giraudeau 1984: 40–1).²⁸ *Themis* and *themistes* are broad terms, in any case, that encompass ‘customs, norms, formal authorisations’ and so forth. In addition, with the word *dikē* the early Greeks arguably eventually thought of a practice of ‘justice’ or ‘judgment’ (Gagarin 1974; Havelock 1978),²⁹ though this is a complex notion that deserves its own study with regard to its complex ancient uses. Suffice to say that *dikē*, in the archaic period, remains a ‘divine function’,

²⁷ See Hirzel (1907); Latte (1946); and Gehrke (2000: 145–6).

²⁸ A separate work will be devoted to the long history of the term *themis*, with special regard to its Homeric and pre-Homeric past. The complex *nomos–themis–dikē* needs to be re-examined as an indiscernible theophysics experience.

²⁹ See the recent study by Pelloso (2012b).

Preface

though it can also signify 'convention', a 'usage' without, however, a necessarily 'universal normative value' attached to it.³⁰

Irrespective of the above, it would be misleading to suggest that we have clear evidence as to exactly how all these words (and more) were used and how they related to each other to the extent that they may have done so (a situation not assisted perhaps by the telling fact that among the poets these terms are often used without much distinction: for example, *thesmia*, *nómoi* and *nomima* appear often as related or interchangeable). Nor do we have – at least not yet – an absolutely convincing explanation as to how, in prose in particular, and in political practice, *nómos*, as it is commonly argued, 'takes

³⁰ It is important to note that in the archaic age, which most concerns this study, there is neither lack of 'law', in the sense of 'formal' and 'informal' ways in which norms are set and are considered binding, nor 'processes' through which disputes are settled. Yet my position regarding the earlier uses of *nómos* and the *nemein* family is similar to that regarding other archaic terms employed in polyvalent ways. While it is understandable that scholars will use modern legal terms to translate or situate the archaic uses, more often than not it is misleading to do so. It is considered apt to refer to these terms with regard to a relatively flexible sense of 'norms, social perceptions and practices, ordering paradigms, enunciations of authority' and so forth, rather than 'laws' or 'legal systems'. This is not to suggest, however, that my hesitation is here in alignment with that of Gagarin (1986), who adopts a largely formalist understanding of 'law' and instead generally hesitates to recognise 'legalities' or, in my terms, 'norms' at any time before the 'fully "legal" stage of development' (ibid. 8–10; for a critique of Gagarin's thesis, see Thomas 1992; 1995b; 2005). In any event, it could be agreed that, early on, the milieux within which norms were set and challenged were, above all, a highly contested social field that was the polis itself, and some of this polyvalence and 'adaptability' continues all the way into the classical period and beyond. For a recent general introduction, see Papakonstantinou (2008), who, it should be noted, opts for the term 'legal narratives' instead of the more open-ended 'norms' that I adopt in this study; in addition, his understanding of such 'narratives' is based, though with some calibration, on the paradigms in cultural legal studies of 'legality' or 'legal consciousness', akin to that of 'legalities' among legal pluralists (ibid. 143–4, n. 50). Papakonstantinou provides, further, a good summary of the emergence of written enactments of norms or 'laws' during the archaic period and of communal 'courts', 'magistrates', 'judges', 'legal records' and 'civic officers'; see especially chs 3 and 4. For an early, schematic, though incomplete, outline of the uses of the words *nomos*, see McCullagh (1939).

Preface

the place' of *thesmos* during the classical period (for example, in Hdt. 3.31, although this question cannot be explored in any substantial sense in this study).

Finally, I should note the sense of the term 'ordering' as it is used in this work to suggest, at times, an affinity with *nómos* and *nomós* and their families of words, which is particularly difficult to specify. Unless otherwise indicated, I use it in the sense of a practical arrangement without a necessarily strict framework. This is especially crucial in the context of the two key words that signify some kind of 'order' and 'ordering' at different periods: the late Attic word *τάξις* (*taxis*), which one meets famously in Aristotle; and the older and more, or at least equally, complex sense of 'ordering' in the Homeric *κόσμος*, *κοσμέω* (*kosmos*, *kosmeō*). Before it is associated with the 'command' of an ordering, or, in fact, with *taxis* (since it is later seen as synonymous), *kosmos* appears within a wide spectrum of uses, which, early on, are adjacent to the sense of an 'arrangement' in what I call a *cosmopoietic* sense. At first, it is not 'political', 'aesthetic' or 'moral', but experiential or 'practical'. This sense is, in fact, sometimes linked to *nomos* with regard to the word *eunomia/-ēn* (εὐνομίην).³¹ As will be seen, understanding what *eunomia* means is, itself, not straightforward. Linked to aristocratic politics, a sense that survives all the way to Pindar and beyond, it is later affiliated with democracy (as well as oligarchy) and often referred to along with the classical *isonomia* (Ehrenberg 1940; [1946] 1965), though it should not be confused with it.³² Early on, it is a social notion, a 'value' as to the ordering of the polis, but its etymology (and use) remains unclear.³³ Laroche, for instance, notes that the etymology linking *eunomia* to εὖ νέμειν (*eu nemein*) and εὖ νέμεσθαι (*eu nemesthai*; with a sense of 'management, ordering or government') is a later derivation from the sixth century BC, while others, in contrast, find its early Homeric usage to be evidence of the 'earliest' reference to a *nómos*-*'law'* when there may, in fact, be no such sense to its

³¹ On *eunomia*, see Andrewes (1938); Ehrenberg ([1946] 1965); and Ostwald (1969: 62ff).

³² See Vlastos (1953).

³³ See Cartledge (1998); Finkelberg (1998a); and the earlier comprehensive study by Kerschensteiner (1962).

uses. The paroxytone *nómos* is most probably, as I observe below, not met with in Homer, yet is met with in Hesiod. The question remains: in what sense(s) is this so? While concrete actions are at the heart of the earlier uses, it may be admissible that the breadth of such a variety of uses provided a fertile ground for some kind of non-diacritic differentiation (for example, from 'a way to doing something' to a 'song'). In light of the available evidence, there may be sufficient ground to suggest that *nemō* as a pastoral verb, that signifies the 'ritual' act of distribution-sharing, is pre-Homeric (or, at least, Homeric), while the more 'abstract' uses may, indeed, be post-Homeric.

According to Felix Heinimann's seminal study, there are two key transitive meanings: 'to distribute', 'to allocate' and 'to graze' ([1945] 1965/1972: 60), which, from early on, do not have any distinct 'political or juridical' sense(s) attached to them. For instance, it remains possible that the deviant sense of a fire 'distributing' itself, expressed early on with *nemō*, or later the 'distribution' of an 'encroaching' ulcer may indicate the lack of a strict normative sense, but instead point to a descriptive-factual sense, at least in the majority of relevant uses. It may also be the case that in the passive use of the word (and its family) it no longer signifies the action of the verb, but the separable 'result' of the action; as, for example, in the oxytone *nomós*, the 'result' being the allocated living space (Heinimann [1945] 1965/1972: 61). For Heinimann (but also for others, including most emphatically Benveniste), there is a certain 'binding' value to the use of *nemein* at all times. Yet how are we to think of such a sense of 'binding authority'? For Heinimann, one thing is clear: such an 'authority' is not 'external' ([1945] 1965/1972: 65). Further clues towards an answer to this question will be forthcoming in this study.

As Laroche argues, from a 'historical perspective' the three words *νομός*, *νομή* and *νόμος* [*nomós*, *nomē*, *nómos*] may have the same root in common, while in the early ancient texts they are fairly autonomous semantic units. Max Pohlenz, who (in contrast to Laroche) supports to an extent the 'evolutionary perspective', has shown that the different formations of the (concrete) oxytone and paroxytone *nomos* are generally accepted ([1948] 1965: 139) along the lines of similar formations in the comparable couples *τροχός*/*τρόχος*

Preface

(*trochós/tróchos*), *φόρος/φορός* (*phóros/phorós*), *τρόπος/τροπός* (*tropós/tropós*), *όλκος/ολκός* (*ólkos/olkós*). Yet as he observes, it is 'rare that the Greek forms two distinctly emphasized verbal substances of the same root' (*ibid.*), while at the same time a certain line of uses leads from one word to the other (*ibid.* 140). The rich and complex uses of the Greek by the poets and the early philosophers perhaps gives rise to the expansion of the uses of the relevant words, including at times uses that are in direct or implicit reflection of their more ancient derivations. But this is not a linear, let alone a self-evident, 'succession or progression'. Even in music (in the particular sense of *mousikē*) where *nómos* – as will be seen in Chapter Ten – finds a remarkable use, the sense of a 'formal rule' is, in fact, later and in some uses highlighted as 'technical'. While a relation to the 'juridical-political' sense can be ventured, it is not present, early on, in the emphatic terms in which, for example, Plato will famously render *nómos* in the classical period.

A further complexity concerns the senses of 'tradition' and 'convention' – or, more commonly, 'custom' (though as Laroche indicates, care is needed as to how 'custom' is to be understood; 1949: 172). This concern relates initially to 'ritual' acts and later to more 'abstract' principles of arrangement and allocation along with extensive 'moral' and 'political' connotations that appear to be quite prevalent in the most ancient sources.³⁴ For many scholars, in fact, the 'originary' sense is that of 'customary uses or practices'. For instance, for Heinimann, binding *nómoi*-customs ([1945] 1965/1972: 67) as well as, later on (post-Hesiod), non-mandatory customs are ubiquitous (*ibid.* 72). It is, then, worth questioning in what sense the term 'custom' is designated in such observations and with particular regard to the nature of its supposed 'binding character'. 'Law', even in modernity, does not have the monopoly of an obligatory-binding sense, nor is the

³⁴ It is particularly problematic to separate 'custom' from the so-called 'legal' uses of *nómos* early on, whether through an 'evolutionary' or a related perspective. Herodotus remains the richest source for the variety of the uses of *nómos* in relation to customs or ways of living, but this merits a dedicated work. All of the key uses, however, are largely engaged with in this study, to one extent or another, on the basis of earlier sources.

'legal norm' the only norm-setting power (even if the former remains quite distinctively formed). Thus, it is, perhaps, possible to understand early 'custom' as to what was 'used' in an empirical sense (and one undifferentiated from the doxastic-local sense).

It is not until the classical period that a pronounced differentiation between the doxastic and the physiological will become the subject of the well-known contrast between *nómos* and *phūsís* (with interest also as to the way in which the related word *nomizō* will be transformed to declare a 'subjective opinion/human artifice', in some contrast to earlier uses; Heinimann [1945] 1965/1972: 76). For Ulrich von Wilamowitz-Moellendorff (1962: 96), *nómos*-custom implies a certain sense of 'ordering'; and Werner Jaeger ([1947] 1960) agrees with the sense of *nómos*-custom as the 'oldest sense'. It is worth asking how much an anachronistic sense of 'custom' is prevalent in some of these interpretations, especially to the extent that this sense is held as a presupposition for the completion of a 'long process' that 'leads to law' (well expressed in Shipp 1978: 6).³⁵ An evident barrier to such evolutionary approaches, whether admitted or implied, remains the coexistence of many different uses, as they will be gradually encountered in this study. For instance, *nómos*-custom, whether wider or localised, continues to be prevalent in Herodotus' later 'ethnographic' account (Giraudeau 1984). The only constant may be the polymorphous concern of the Greeks over the 'arrangement' of associative living, long before, say, the *nómos basileus* ('*nómos* king') of Pindar and the *nómos despotēs* ('rule of law') of Demaratus (Hdt. 7.104.4–5).

Martin Ostwald (1969), in his classic and still essential study, arrives at relatively similar conclusions to Laroche by following, however, a semantic (rather than an etymological) method of analysis. I will therefore examine to what extent

³⁵ For an introduction to the 'development' of early Greek law, see Gagarin (2005; 2008); though note, once more, that Gagarin's parameters for what counts as 'law' are quite narrow (1986: 7). In addition, his speculation remains that there was far more widespread 'legislation' during the archaic period than is commonly accepted; compare Hirzel (1907); Ehrenberg (1921); Heinimann ([1945] 1965/1972); Ostwald (1969); de Romilly (1971); Giraudeau (1984); and Hölkeskamp (2000).

Preface

the sense of 'distribution' in question, as Ostwald suggests, concerns a distribution that is being made each time 'in an authoritative fashion': that is, in a way that is considered/accepted as 'valid' (i.e. a norm). This is, in fact, the point of criticism that Ostwald raises as to the largely etymological analysis of Benveniste, who, according to Ostwald, disregards the 'fact' that the distribution is done not from the point of view of 'the agent', but from that of the 'accepted norm' (1969: 10). It seems that Ostwald may miss, however, a key point of Benveniste's analysis in *Le Vocabulaire des institutions indo-européennes*, 1: *Économie, parenté, société*, which is not to disregard that 'fact', but rather to examine its fundamental component: that is, the ritual (for Benveniste) performance of the act of 'distribution', an act which, in this sense, establishes a norm as such. According to Benveniste, etymologically the *nemein* family signifies 'legal'/'regular distribution' or 'sharing out' (in contrast to Laroche's emphasis on distribution as such); a 'sharing out' that is not enacted by arbitrary decision, but by 'law' or 'custom'.³⁶ He also explains, in this way, the oxytone *nomós* as a 'sharing out of pasture land' according to customary 'law'. Thus, *nemō* does not mean 'to take', but 'to distribute according to law', a 'legal apportionment'. In the light of my study, it may be the case that Benveniste summons the family of words to the 'law' too early and too widely, forming a premature 'self-sufficient circuit'. But the question remains: was this how the uses of these words were experienced early on?

Ostwald confirms that there is no precursor to *nomos* in the pre-archaic Linear B. For him, the word *nómos*, from the start, is characterised as an order of some kind: that is, a norm that is valid in a given situation (1969: 20). I would add that this, in a general sense, appears to be evident, if by a 'norm' we understand not a formal normativity (of law), but what I call an *ethological* ordering that is valid in (and only because of) a particular situation or milieu. Ostwald, in his study, presents at least thirteen different uses of *nomos*, ranging from an 'order or way of life' to 'a way in which something is to

³⁶ Benveniste stresses this point further in *Noms d'agent et noms d'action en indo-européen: 'partager légalement, faire une attribution régulière'* ([1948/1975] 1993: 79).

be done', 'a belief or custom', a 'ritual process' or the 'mores of a group' and, of course, certainly in the classical period, some kind of 'law', although, in any case, without *nómos* ever meaning exclusively 'law' (ibid. 20–54). While very useful in one sense, any such listing may also mislead one to expect a rather abstract or schematised range of uses that are ahistorically available (of which Ostwald is, of course, aware). Hence, it is necessary to attempt, to the extent possible, an intimate situating of the uses in their milieux of experience while letting the multiplicity of uses and their intersections speak, in a sense, for themselves.

For the exceptional linguist Pierre Chantraine (1899–1974) (director of Greek Philology studies at the *École Pratique des Hautes Études* in Paris), the semantic range is first concrete and later more abstract, while the root of *nemō* is ambivalent, ranging from 'to make a regular allocation' to 'to assign', 'to deal out' and 'to allot portions' (1968–2009).³⁷ For Chantraine, the earliest milieu for the uses of the verb *nemō* is, in fact, agriculture and food, where the dealing out of portions is performed according to custom or rite. An appropriate distribution of pastures for breeding and the sense of 'inhabitation' are also noted as already prevalent early on. Yet when *nómos* begins to have a slightly clearer sense of a 'rule', it may be in the musical sense of a certain kind of *nómos* that precedes the so-called legal sense in the seventh century BC (a hypothesis which I examine in more detail in the last chapter of this study).

The British archaeologist John L. Myres, incidentally, argued similarly, though he denied the presence of the use of 'custom/norm' in the Homeric period ([1927] 1969: 151). The question of the so-called 'norm or ordering principle' is, perhaps, a rather intransigent notion to 'apply' to the early Greek context in a time when, as Myres noted, the so-called norm or order of human life coheres with the order of *phusis* and, in turn, with that of the divinely protected order of the whole (ibid. 154). The 'source' is divine *phusis*, in a sense, albeit clearly through an understanding of *phusis* that is not yet that of the famous antithesis between *nómos* and *phusis*

³⁷ See Vincenti (2007).

in the classical period.³⁸ Early on, the way of life ('custom', *ēthos*) is not separable from *phusis* or the divine, similarly to the way in which *ēthos* initially is associated with the concrete acts of living in one's haunts, long before it will be thought of as entailing principles of wider application (as in a modern understanding of 'ethics'; Havelock 1963: 62–3). However, 'ethics' perhaps finds implicitly its root in the way in which, for instance, Aristotle confirms (in the *Eth. Nic.* 11, 1152a30f) that habit or *ēthos* is 'unnatural' (*ou kata phusin*), but a 'secondary nature', that is, a 'human artifice', while earlier *ethēa* (abode) and *ēthos* (local way of life, habit) do not have a wider 'moral' or 'psychological' content (Arist. *De Mundo* 398b32).³⁹

According to the invaluable study of the German classical scholar Rudolf Hirzel (who at some point cohabited with Gottlob Frege) at the start of the twentieth century, in contrast to Laroche, the sense of *nómos*-custom is quite prevalent prior to the fifth century BC. For him, the starting point is 'tradition' or 'convention' (of a certain kind), which is not far from the sense of *ēthos* and habit – a way of living or of doing things, though in a quite concrete sense. In the 'beginning', for Hirzel, there was 'custom' (and a sense of 'customary law'; 1907: 365–6). But, as he notes, this 'law' is not exactly a 'law' at all for it describes the 'divine ordinances' of the *themistes*, who are initially 'judges', and also the *thesmoi* that were prevalent in the sixth and seventh centuries BC. It does not relate to a regulatory sense, but rather is a way of acting, a way of behaviour, or living, more generally. This sense is always expressed in the particular milieu in which it applies and remains self-explanatory: that it is, in other words, in the '*phusis*' of this or that to be in this way (*nómos*) or that (ibid. 367). That is to say, it is the *nómos* of the 'thing' or the milieu, not the *nómos* of the subject, that 'commands or rules'. A power that *is*; not a power that is 'had'. When we meet the first 'commands', in this sense, they are not of the 'individual subject', but of the gods or of the common situation (which, in any case, cannot be easily distinguished).

³⁸ On the *nómos*-*phusis* contrast, see, indicatively, Heinimann ([1945] 1965/1972); Guthrie (1969); McKirahan (1994: ch. 19); and Hoffmann (1997). On *phusis*, see Naddaf (2006).

³⁹ On *ethēa* and *ēthos*, see Schwartz (1951).

Preface

For this reason too, it will once more be necessary to extricate the uses of not one but two words (*nómos* and *nomós*). It is only much later that *nómos* will entail, conceivably, the sense of a coercive ‘command’, as seen in Plato and Aristotle (*Sym.* 182b and *Eth. Nic.* 10, 1180a21, respectively). When *nómos*-‘law’ emerges most vividly in the classical period, but perhaps in some sense earlier too, it will tellingly interrupt, at least to an extent, the old ‘customs or habits’,⁴⁰ not so dissimilarly, perhaps, to the way in which the old ‘customs’ or *nómoi* will, in Hesiod, be emphatically opposed to ‘violence’ (*bia*). In other words, some sense of ‘custom’, or, better, ‘forms of life or ways of life’, is present in the sense of ‘distribution-sharing or arrangement’ which the crucial family of *nemein* appears to have expressed from early on in a variety of ways. Initially, the concrete sense may be that of the use (*chrēsis*)⁴¹ of a ‘rule’, rather than one of the ‘application of an external authority or principle’ or some kind of ‘law’.⁴² The early *nómos* is, perhaps, in a modern sense, an ‘objective’ rule or ordering, but it is not separable from the life to which it applies. It is not a form that can be distinguished from the living that it ‘commands’. So impossible is it to separate life from its ‘rule’ that the ‘rule’ is believed to have pre-existed the polis or more widely the *kosmos*, or to have been immanent in it from ‘time immemorial’.⁴³ Such, then, is the problem with approaching the untranslatable.

The early Greeks were neither ‘naturalists’ nor ‘positivists’, neither ‘religious’ nor ‘secular’. If, earlier on, *nómos* meant ‘law’ in any sense, then it was in the sense, perhaps, of a ‘binding norm’ in a quite general manner, which for centuries remained oral, divine and only later was associated with the [ἄγραφα] *agraphos nómos* that would be thought of as common to peoples outside of one’s local milieu (as Antigone most famously refers to it).⁴⁴ Thus, it remains misleading to say that ‘originally’ ‘law’ simply means ‘distribution’, ‘appro-

⁴⁰ See Hirzel (1907: 371); as regards the classical period see, for example, the discussion in Por. *De asbstin.* 4, 22.

⁴¹ See, generally, Agamben (2016a).

⁴² On the latter, see Ehrenberg (1921).

⁴³ See Pelloso (2012a: 60, n. 175).

⁴⁴ See Pl. *Nom.* 3.680a; and Arist. *Rhet.* 1373b4–6.

priation', 'division' and so on, and equally so to say that *nómos* is 'originally' 'political', 'juridical', 'religious' and so forth. As already noted, most probably the ancients did not call their 'laws' *nómoi* before the fifth century BC (Hölkeskamp 1999: 44–59; Avilés 2010) and, when they did so, what they meant is subject to ongoing debate.⁴⁵ Nor should one call this *nómos* a somewhat philosophical 'Law of law' (as, in some sense, Carl Schmitt does by implication), using the very term that does not apply to *nómos* in order to simultaneously explain it as if it were its 'outside' (as he does in *Der Nomos der Erde* [*The Nomos of the Earth*], 1974). There was no evolution from 'custom' to 'law' (Camassa 2011a: 471), but there was neither 'law from the start' (Shipp 1978) nor law from 'early on' (Camassa 2011a; 2011b). Perhaps the use is present in the sixth century BC, as Giorgio Camassa argues, but is the right term for it the quite modern monolithic and unifying term 'law'? The use(s) of *nomos*-law' may have taken place as a result of a political-economic situation, which probably had to do (though this remains speculative) with the complex events that connect the long period of the expansion of the territory of the Greek polis (between the earlier extensive

⁴⁵ Ostwald advances the thesis, since then widely repeated, that the term *nómos* signifies 'law', most evidently late in the sixth or fifth century BC, when it 'replaces' *thesmos*. Yet the 'break' that he seems to advocate is not without doubt. While I will not examine this question in this work, a key point that the literature makes clear and that I shall maintain is that the ancients were fully aware of the multiplicity of the uses in question, as well as of the intersections between them; see Borecký (1971). Furthermore, Quass (1971) suggested that *nómos* may not be the earliest term to replace *thesmos*, but rather *psēphisma*. See also the valuable study by Jones (1956). As Humphreys has noted, the earliest inscription to use *nómos* in relation to a (written) 'law', crucially perhaps with regard to a 'religious' matter, is a decree dated 418/7 BC (*IG I³*, 84.25) (1988: 217). For Humphreys, with good reason, *nómos* appears to indicate – throughout the centuries – something that has long been held to be so within a particular milieu, and that cannot be reformed easily (*ibid.*). Papakonstantinou offers, in his way, an adjustment to Ostwald's view as to the 'replacement', when he writes (2008: 135): 'Overall, it is far more probable that any changes in legal terminology, and especially in the use of *thesmos* and *nomos*, in archaic and classical Athens were effected over long periods of usage and emerged as a result of, and not in conjunction with, pivotal moments of legislative and constitutional change (e.g. Solon and Cleisthenes).'

'colonisation' and the so-called 'radical democracy' of the fourth century BC). Camassa is partly inspired for his view by the earlier expression of dissent by George Pelham Shipp, for whom *nemein* and its family entail a sense of 'division', with particular regard to the arrangement and settlement of 'colonial' lands (Shipp even compares it to the common-law notion of 'radical title'; 1978: 5). In this manner, *nómos* becomes, in a juridical sense, the 'measure' that 'divides the land' (ibid. 12). Yet Shipp's view of a *nómos* that is completely and rather suddenly redefined during the 'colonial' experience (i.e. in *Magna Grecia*), in a way which remains juridical and 'entirely secular', appears perhaps a bit far-fetched, if not insufficiently supported (ibid. 17). It should be further noted that, for Shipp, *nómos* already means 'written law' in the eighth or seventh century BC. In some contrast, in this study, I hold as an equal, if not earlier, possible contender for the supposed 'earliest' milieu of *nemein-nómos* that of 'sacrificial (feast) ritual', rather than 'land distribution/division' (following the earliest, so far as I know, use of the term *nómos*, in Hesiod's fr. 322 [MW]).

In the classical period, *nómos* will convey the idea, among other uses, of both the 'custom' that is based on a convention (or the gods) and, eventually, the *nómos*-law' that is established by a formal decision creating an obligatory norm (Pohlenz [1948] 1965), but this will take place through a polymorphous conflict with the old that will transform, if not generate, the use of *nómos* as the *dogma* of the polis (δόγμα πόλεως; Pl. *Minos* 314c, 415b), yet without eliminating other uses. Before then, *nomos* appears more proximate to the practices of a particular way of life, a proto-regular form of life (Pohlenz [1948] 1965: 138), a particular 'movement' in doing things, rather than a 'state' or a 'law'. A partly speculative sense, then, of a way of doing something, a living-rule, a certain ordering, can, at least to an extent, be derived from one of the most ancient literary sources in the act of distributing-sharing, allotting or arranging. I shall maintain then that it is particularly reductionist (and in some respects anachronistic) to consider *nómos* to be semantically or etymologically derived from, or leading to, an exclusive or linear sense of 'law'. In addition, what is designated as 'law' (including, crucially, what 'precedes' it), in itself broadly conceived, calls attention

Preface

to the complexity and multi-threadedness of the uses of the family of words in question (as well as to the multiplicity of other words that designate aspects of 'custom', 'ordering', 'rule' and 'law-making' which already coexist in a rather complex manner during the archaic period). Ultimately, we can, perhaps, project that the experiential senses of the word, the *nómos*-ritual' act (way, rule of action, rite) and the pastoral uses, as well as the relatively 'abstract', or, better, wider sense of ordering (convention, custom, arrangement, way of rule and political administration, 'law' or government), are genuinely 'Greek' experiences of *nómos* that coexist and co-depend on each other (allowing for contradiction, as much as contingent, or otherwise, tuning).

It is significant too, for my purposes, that the Greek 'ordering' (earlier: *kosmos*) is, in a sense, practical, situational and holistic (Hölkeskamp 2000: 76). For Hölkeskamp, the ordering co-ordinates two senses of the term – a 'factual' and a 'normative' one – but, in any case, the crucial aspect is their interrelatedness or inseparability. This will become further evident in this study, given that the different levels of practices indicated with the *nemein* family of words are coexisting uses, and this will also be seen to be so as to the uses of *nómos* (ibid. 77). It is crucial to appreciate, then, that 'fact' and 'right' are not separable here, or at least not in the way in which we are accustomed to discern them. Perhaps later, when the new – albeit even then not to be assimilated to the modern – sense of 'law' is added to *nómos*, *nómos* institutes a new form for the 'relation', or better, arrangement in the life of 'norms'. Still, this new, relatively 'technical', significance (more 'political' than 'juridical', which in any case were also not rigidly separated) would remain one among multiple coeval uses of the words in question.

To Emilie and Rémi