

## PARS LITTERARIA

**Jan SKARBEEK-KAZANECKI**

Uniwersytet Łódzki

 <https://orcid.org/0000-0002-4127-4070>

### HOW MUCH NEW IS THERE IN THE OLD? *THEMIS, DIKE* AND AN EVOLUTIONARY UNDERSTANDING OF ANCIENT GREEK NORMATIVITY

The study of normative and legal systems in archaic Greece reveals two competing interpretative models. The first highlights the autonomy of early lawmakers, portraying them as largely free from the constraints of inherited traditions and capable of enacting diverse laws and decrees. The second posits the existence of shared pan-Hellenic practices, a standardized legal terminology, and, above all, common cultural norms underlying the sanctions applied across various *poleis*. At the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries, these seemingly opposing perspectives were synthesized into a progressive interpretative framework. This new model presented the history of ancient Greece, starting in the early archaic period, in terms of tension and conflict between two normative systems, the old and the new – and, by extension, two contrasting approaches to the administration of communal justice. Importantly, the conceptual categories for these two historical “moments” were embodied in the terms *themis* and *dike*. The article offers a hermeneutic reconstruction of early 20<sup>th</sup>-century research on the *themis*–*dike* distinction, highlighting its influence on contemporary scholarship. It examines how these old assumptions and paradigms have shaped current interpretations of these foundational concepts.



© by the author, licensee University of Lodz – Lodz University Press, Lodz, Poland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution license CC-BY-NC-ND 4.0 (<https://creativecommons.org/licenses/by-nc-nd/4.0/>)

Received: 16.12.2024. Verified: 19.12.2024. Revised: 08.05.2025. Accepted: 14.05.2025.

**Funding information:** University of Lodz. **Conflicts of interests:** None. **Ethical considerations:** The Authors assure of no violations of publication ethics and take full responsibility for the content of the publication. **Declaration regarding the use of GAI tools:** not used.

## QUANTO DI NUOVO C'È IN CIÒ CHE È ANTICO? *THEMIS, DIKE* E L'EVOLUZIONE DEL PENSIERO NORMATIVO NELL'ANTICA GRECIA

Lo studio dei sistemi normativi e giuridici della Grecia arcaica mette in luce due modelli interpretativi principali. Il primo esalta l'autonomia dei primi legislatori, considerati liberi dalle tradizioni ereditate e capaci di emanare leggi e decreti molto diversi tra loro. Il secondo sottolinea l'esistenza di pratiche condivise a livello panellenico, con una terminologia giuridica uniforme e norme culturali comuni che guidavano le sanzioni applicate nelle diverse *poleis*. Tra la fine del XIX e l'inizio del XX secolo, queste due prospettive, apparentemente in contrasto, sono state integrate in un modello interpretativo unitario, di natura processuale. Questo approccio descrive la storia della Grecia antica, a partire dall'epoca arcaica, come un conflitto tra due sistemi normativi opposti e due modi diversi di amministrare la giustizia nelle comunità. I concetti di *themis* e *dike* hanno rappresentato le categorie fondamentali di questi due "momenti" storici. Questo articolo offre una ricostruzione delle ricerche sulla distinzione tra *themis* e *dike*, avviate all'inizio del XX secolo, e analizza l'influenza di quei paradigmi sulle interpretazioni contemporanee di questi concetti centrali.

**Keywords:** legal procedure in Homer, Normativity, Ancient Greek Law, historiographical criticism

**Parole chiave:** processo in Omero, normatività, diritto dell'antica Grecia, critica storiografica

**Slowa kluczowe:** procedura prawna u Homera, normatywność, prawo starożytnej Grecji

In the book *Ancient Greek Democracy and Its Significance for Us Today* Cornelius Castoriadis discusses the phenomenon of colonization (*apoikismós*) in the Archaic period, highlighting a particular aspect of the organisation of Greek communities (Castoriadis 1986: 19):

The ancient Greeks were not the only people to establish colonies, but their approach to colonization had a distinctive feature that set them apart from other peoples. For instance, Phoenician colonies replicated the laws of their mother cities without modification, much like Jewish communities following the diaspora adhered strictly to the laws of Jehovah and their traditional way of life. In contrast, both the first and second wave Greek colonies adopted their own laws or appointed lawgivers to craft legal frameworks suited to their specific circumstances.

Although Castoriadis idealises the democracy of ancient Greece and its institutions in many respects (*cf.* Karakantza 2020: 149–150), he correctly emphasises the absence of a dominant “pan-Hellenic” legal code or universal codification within the Greek cultural sphere. This absence allowed for a degree of freedom in the establishment of laws. It is often noted that in Greece, there was no singular poem or universally accepted “sacred text” of unquestionable authority that clearly defined the rules of communal life or the relationships between humans and gods. In this regard, the Greek legal system stood out among other ancient cultures: as Oswyn Murray (1993: 181 [1978<sup>1</sup>]) notes, “the origins of Greek justice are human” and “Greek law derives (...) not from any set of divine commandments, but from the human recognition that individual judgements ought to follow a pat-

tern”.<sup>1</sup> In this respect, as Lloyd (1979: 247) further observes, with the development of *polis* institutions “the laws themselves become the subject of open debate and depend upon public consent.”

In contrast to the perspective outlined above, analyses of Archaic Greece can also be approached from a different angle: seeking similarities between the systems and institutions of the emerging city-states, identifying a “common ground” (Biscardi 1982: 9) among the early Hellenes, or emphasizing the “spiritual unity” (*geistige Gemeinsamkeit*) of Greek law.<sup>2</sup> This approach highlights how traditional norms shaped key solutions adopted by individual poleis. An example of research following this model is the work of Professor Joanna Rybowska, to whom this volume is dedicated, particularly her monograph *Piety and Impiety in Greek Culture* (Rybowska 2017). Although the scholar frequently emphasized that Greek religion was an “open system,” with both local and pan-Hellenic dimensions, the main focus of her analysis was the search for the “most important religious laws of the ancient Hellenes” (2017: 576) – universally accepted rules that connected distant *poleis*. Notably, these customary laws, referred to in early archaic epic as *themistes* (see below), were fundamental to the organization of Greek communities and, in the legal dimension, took precedence over local regulations concerning religious, social, and political life.

As we will see, at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries, these two seemingly contradictory research perspectives were reflected in progressive (teleological) theories – evolutionary concepts that portrayed the Archaic period as an era of conflict between “old” and “new” normative spheres. Notably, this historical process was often understood as being expressed through the conceptual opposition of *themis* and *dike*: two normative categories supposedly indicating distinct “moments” in the transformation of the socio-political realities of ancient Hellas.

The aim of this article is a hermeneutic analysis of the controversy outlined above: to uncover the assumptions underlying these paradigms and to reconstruct the broader context of the debate concerning the birth of the polis and the nature of key public (political) institutions of the Archaic period. I also intend to highlight the influence that both models exert on contemporary studies dedicated to the key legal categories of the Archaic and Classical Greeks, including the understanding of *themis* and *dike*.<sup>3</sup>

<sup>1</sup> Similar remarks in: Wolff 1982: 776 = 1980; Gagarin 2005b: 91–92; Balot 2006: 25; Gehrke 2010: 18; Raaflaub 2013: 82–83; Tor 2017: 40. Sometimes the Homeric epics are bible” of the Greeks (e.g. Finkelberg 2003 = 2020: 318–330 with a wider literature), but such analogies require considerable caution.

<sup>2</sup> I am referring here to the work of Hans Julius Wolff (1971), who sought the unity of “Greek law” precisely in common concepts and ideas (*Grundvorstellungen*) – such as *dikē*, *hýbris*, *blábē* or *homologeîn* (cf. Gagarin 2005a: 30). On the subject of the common legal terminology of the Greeks, see furthermore Youni 2006: 18.

<sup>3</sup> Some of the conclusions presented in this article are based on my doctoral dissertation: Skarbek-Kazanecki 2023.

### Preliminary remarks on the categories of *themis* and *dike* in the archaic age

The events of Homer's epics unfold in a mythical past, meaning the realities depicted do not directly reflect the everyday life familiar to the rhapsodes who composed and transmitted them. Over the past century, this observation has led many to question the value of these epics as historical sources.<sup>4</sup> Critics have argued that the *Iliad* and *Odyssey* are merely fantasies, fictional accounts created by the illiterate people of the "Dark Ages" (i.e., those living in the 8th century BCE or earlier), imagining heroes from a time before the fall of Mycenaean palaces and other catastrophes that ended Bronze Age civilizations.<sup>5</sup>

Today, however, such scepticism is rare. Scholars now argue for at least partial accuracy and historical credibility in the *Iliad* and *Odyssey*. They point to the consistency of the customs and social rituals described by Homer, as well as the coherence of the terminology related to (quasi-)legal institutions and procedures that organize the lives of the heroes portrayed. In the Greek epic tradition, *themis* (plural *themistes*) provides an example of such rules – "stored in the collective memory" (Jeffery 1976: 42) and "rooted in tradition."<sup>6</sup> This term often encompasses various prohibitions or commands, both religious, such as the obligation to pray and make libations before beginning a feast (*Od.* 3.43-7, trans. R. Fagles):

εὐχεο νῦν, ὃ ξεῖνε, Ποσειδάωνι ἄνακτι:  
τοῦ γὰρ καὶ δαίτης ἠντήσατε δεῦρο μολόντες.  
αὐτὰρ ἐπὶ ν σπείσης τε καὶ εὐξέαι, ἧ θέμις ἐστί,  
δὸς καὶ τούτῳ ἔπειτα δέπας μεληδέος οἴνου  
σπεῖσαι ...

Say a prayer to lord Poseidon, stranger,  
his is the feast you've found on your arrival.  
But once you've made your libation and your prayer –  
all according to ancient custom (*thémis*) – hand this cup  
of hearty, seasoned wine to your comrade here  
so he can pour forth too. (...)

<sup>4</sup> Finley 1979 [1954<sup>1</sup>], Snodgrass 1974 (= 2006, chapter 10), Snodgrass 1980. It should be emphasized that the orally transmitted tradition of Homer may date back much further than the 8<sup>th</sup> or 7<sup>th</sup> century BC (see: Stein-Hölkeskamp 1989: 18–20; Duploux 2006: 170–171, 175–177). Moreover, some scholars have noticed traces of the Mycenaean dialect in the language of the epic (cf. Latacz 1985: 66–68), suggesting that the linguistic form of the epics may even date back to the 12<sup>th</sup> or 13<sup>th</sup> century BC (van Wees 1992: 262).

<sup>5</sup> On the significance of *themis* in the following passage, see: Yamagata 1994: 64–65; Janik 2003: 82–83. On the problem of the "reality" (historicity) of Homer's world, see: Bravo 1988; Janik 2003: 8–12; Papakonstantinou 2008: 13–14, 20–24; Węcowski 2011; Elmer 2013: 8–13.

<sup>6</sup> "auf Herkommen ruhende", as Latte (1946: 63) wrote. Cf. Hölkeskamp 1999: 18–19, who describes the norms belonging to the *themis* order as "«allgemeine Rechtsüberzeugung» die aus traditionellen sitten (...)"; also Gagarin (2008: 20, note 14, also p. 91), for whom "[*themistes*] are the traditional rules and customs of a community."

as well as regulations concerning public order, such as the “right” to criticize a political leader in a public assembly (see below, paragraph 3). *Themistes* point to an eternal and universal “order of life,”<sup>7</sup> whose source and guarantors were the gods.<sup>8</sup>

In Homer, alongside *themistes* – the divine and timeless rules of collective life – there are also *dikai*: public “decisions” or “judgments” issued in response to conflicts within the community. In this regard, the concept of *dike* opens up a wide field of speculation about the existence of proto-legal procedures in early Archaic Greece, with a significance and impact analogous to those found in modern legal systems.

A striking example of a Homeric “court-show” or judicial process can be found in Book XVIII of the *Iliad*. In a monumental ekphrasis, the narrator presents a vivid depiction of the Shield of Achilles, crafted by the god Hephaestus. This image represents a kind of microcosm (Edwards 1991: 213) and a celebration of orderly social life (lines 497-508, trans. R. Lattimore):

λαοὶ δ' εἰν ἀγορῇ ἔσαν ἄθροοι: ἔνθα δὲ νεῖκος  
 ὠρώρει, δύο δ' ἄνδρες ἐνείκεον εἵνεκα ποινῆς  
 ἀνδρὸς ἀποφθιμένου: ὃ μὲν εὖχετο πάντ' ἀποδοῦναι  
 δῆμῳ πιφαύσκων, ὃ δ' ἀναίνετο μηδὲν ἐλέσθαι: 500  
 ἄμφω δ' ἴεσθην ἐπὶ ἱστορί πεῖραρ ἐλέσθαι.  
 λαοὶ δ' ἀμφοτέροισιν ἐπήπυνον ἀμφὶς ἄρωγοί:  
 κήρυκες δ' ἄρα λαὸν ἐρήτυον: οἳ δὲ γέροντες  
 εἶατ' ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ,  
 σκῆπτρα δὲ κηρύκων ἐν χέρσ' ἔχον ἡεροφώνων: 505  
 τοῖσιν ἔπειτ' ἦϊσσον, ἀμοιβῆδ' δὲ δίκάζον.  
 κεῖτο δ' ἄρ' ἐν μέσσοισι δῶα χρυσοῖο τάλαντα,  
 τῷ δόμεν ὅς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.

The people were assembled in the market place (*ein agorêi*), where a quarrel had arisen, and two men were disputing over the blood price for a man who had been killed. One man promised full restitution in a public statement, but the other refused and would accept nothing. Both then made for an arbitrator, to have a decision; and people were speaking up on either side, to help both men. But the heralds (*kérykes*) kept the people in hand, as meanwhile the elders (*gérontes*) were in session on benches of polished stone in the sacred circle and held in their hands the staves of the heralds who lift their voices. The two men rushed before these, and took turns speaking their cases (*dikazon*), and between them lay on the ground two talents of gold, to be given to that judge who in this case spoke the **straightest opinion** (*dikēn ithýntata eípoi*).

<sup>7</sup> Lesky 1985: 15 (*die Ordnung des Lebens*). Cf. Biscardi 1982: 353: “Esse [sc. *themistes*] non sono altro che delle formule magico-religiose, le quali esprimono la volontà ineluttabile degli dèi, e che quindi sono leggi per i mortali (...).”

<sup>8</sup> Lloyd-Jones 1971: 6–7; Janik 2003: 45–87; Barker 2009: 61–63, and Pelloso 2012: 29–30, 69, which provides a more extensive bibliography.

The connection between the quoted lines and the procedures for publicly administering justice seems undeniable. The described procedure is highly formalized (or even “ritualized,” see Raaflaub 1997: 12–13): on the *agora*, alongside a crowd of spectators gathered to listen to the dispute (*neĩkos*, v. 497), there are “heralds” (*kěrykes*) overseeing the proceedings, as well as the “elders” (*gérontes*, v. 503), the main figures in the scene.<sup>9</sup> They sit on designated stones, ‘in a sacred circle’ (*hierōi eni kýklōi*, v. 504), and, with the right to speak conveyed through the heralds, they also pass around the scepter (*skēptron*) – a symbol of authority, which, in Homer, connected the speaker’s competence to the will of Zeus and the divine norms (*themistes*) established by the god.

Unfortunately, we cannot be certain of the exact nature of the process described (cf. Wolff 1946: 43): whether both sides of the conflict – apparently over financial compensation (*poinē*, l. 498) for the murder of a relative – are participating voluntarily, and whether the verdict is reached through a compromise by all parties, or imposed by the decision of the community’s representatives. However, descriptions of similar procedures in other parts of the epic (see below) suggest that the elders, whose role is characterized by the phrase “to speak *dike*” (*dikēn eipeĩn*) and the verb *dikazein*, primarily act as arbitrators, tasked with resolving the dispute. In other words, in this scene, *dike* refers to a verdict (*Urteilsspruch*), as Latte (1946: 64–65) writes, a decision<sup>10</sup> acceptable to all parties, bringing the conflict to a peaceful resolution. Similarly, the verb *dikazein* indicates the act of delivering *dike*.

I would like to emphasize that in the quoted passage, the concept is further defined by the adjective *ithýs* (feminine form: *itheĩa*). As Hartvig Frisch (1949: 41) notes, *itheĩa dikē* in the epic tradition is a standard expression for a “just verdict,”<sup>11</sup> contrasted with *skoliē dikē*, meaning a “twisted” or “crooked” decision (cf. Rousseau 1996, § 9). In the scene from the Shield of Achilles, the text even refers to the person who “would speak the *dike* (judgment) in the straightest (most just) manner” (*Il.* 18.508). Thus, as Yamagata (1994: 66) has observed, *dike* is gradable, and not every verdict or proposed resolution of a dispute referred to by this term is necessarily correct, appropriate, or just (see also Lloyd-Jones 1971: 166–167; Lesky 1985: 21).

### Reconciling contradictions: Evolutionary explanations in modern scholarship

As I stated in the introduction, the dominant interpretations of the normative and legal sphere of the ancient Greeks oscillate between two extremes. The first tendency focuses on the freedom and autonomy of the earliest lawmakers.

<sup>9</sup> For a discussion on the *gerontes* in Homeric epics, their authority, status, and assigned decision-making roles, see Ulf 1990: 70–83.

<sup>10</sup> Allan 2006: 10: „(...) δίκη (qua ‘justice’) is essentially the revelation of particular decisions”. Cf. Janik 2003: 16–23.

<sup>11</sup> See e.g. Glotz 1904: 239; Hirzel 1966: 95.

According to this interpretative model, political decisions in the emerging *po-leis* were made in abstraction from tradition (or from those cultural norms that might have been regarded as “traditional” or “divine”). The second paradigm, by contrast, posits the existence of shared pan-Hellenic practices, a unified legal terminology, and, most importantly, similar cultural norms underlying the legal sanctions and regulations enacted in individual *polis*.

Surprisingly, for many scholars of the 20<sup>th</sup> century, the interpretations outlined above were not necessarily exclusive of one another. Rather, they represented different moments within a broader historical process: the gradual negation and rejection of traditional norms legitimised by divine authority in favour of a dynamic normative-political order based on compromise and independently developed rules of communal life. The trajectory of this evolutionary dialectic was illustrated by two categories discussed above, namely *themis* and *dike*. These categories belonged to distinct historical “moments” and, moreover, represented conceptual articulations of two contrasting normative-legal systems. The *themistes* were said to embody ancient, archaic norms – values or rules deeply rooted in the “Dark Ages,” perhaps even the Mycenaean era.<sup>12</sup> By contrast, the concept of *dike* – which, as we have seen in Homer, signified “verdict” or “decision” and was used in the context of communal, consensual actions – was thought to point to the order of the emerging polis: a new normative system much closer to the “civic values” of the classical period, based not on the authority of the gods but on human decision-making.

The most influential work framing the relationship between *themis* and *dike* in this chronological (evolutionary) perspective is arguably *La solidarité de la famille dans le droit criminel en Grèce* by Gustave Glotz (1904; see also 1928 = 1994 and 1996). In this study, the starting point for considering the significance of the terms discussed above is the question of the dynamics and character of socio-political changes in Homeric times.<sup>13</sup> Assuming that the basis of the social system in the early archaic period consisted of “aristocratic” families (*genos* in the singular) – which, in his view, were closed to the outside world and united by “pride in their divine blood” and power derived from military strength (1904: 238) – Glotz distinguished “two kinds of justice” (*deux sortes de justice*, 1904: 21). The first, expressed by the term *themis*, referred to traditional norms and elite

<sup>12</sup> For instance, Cantarella 1979: 245–248, 301–303. In this context, the decipherment of Linear B script and the reconstruction of texts preserved on clay tablets from Mycenaean palaces have provided fertile ground for speculation and scholarly imagination. A notable example is the document from Knossos, KN V 280, line 5, where in the 1960s the sequence *o-u-(ki)-te-mi* was identified as the Homeric phrase *ou(khi) themis* (see Palmer 1966: 275–276; Palaima 2000). For a broader bibliography and discussion of scholarly interpretations, see Peloso (2012: 21–29, 97–99, and 139, note 2). As Lesky (1985: 9) observes, while the hypothesis linking the concept of *themis* to the Mycenaean legal sphere is intriguing, it must nonetheless be approached with great caution.

<sup>13</sup> Glotz’s work was largely inspired by earlier publications, particularly *La Cité antique* by N. D. Fustel de Coulanges (Paris: Durand, 1864). For a discussion of this work and its influence on Glotz, see Bourriot 1976: 71–83 and Roussel 1976: 5–6, 102.



(“aristocratic”) values regulating relations within the family, as well as the authoritarian decisions made by the leader or head of the family. Opposed to *themis*, the concept of *dike* was thought to reflect “inter-familial law” (*le droit interfamilial*, 1904: 20), open to interpretation and aimed at achieving compromise between conflicting families. Moreover, this law was seen as distinct from morality or traditionally understood normativity.<sup>14</sup> In times of dynamic socio-economic changes, rising class conflicts, and the crystallisation of the “city-state” community, it was *dike*, according to Glotz, that became the central concept of the value system of the *polis* and a synonym for civic obligations prioritised over the interests of close friends and relatives (1904: 238–241).<sup>15</sup>

Thus, two seemingly contradictory intuitions – the first emphasising the relative stability of Greek norms rooted in divine authority, and the second highlighting the dynamic character of the contemporary normative-political order (based on compromise and the willingness to shape collective rules) – resonate and complement each other in the form of the concepts of *themis* and *dike*. Furthermore, this dichotomy long seemed to provide an excellent explanation for the tension between “eternal laws” and the statutory laws of the *polis*, a tension evident in Athenian literary texts of the fifth and fourth centuries BCE.<sup>16</sup> Although the debates of the classical period concerning the nature of law and its boundaries employed terms other than the *themis*–*dike* dichotomy – closer to the political and legal realities of the time – Rudolf Hirzel (1907, *cf.* Ostwald 1973a = 2009: 128–130), another scholar no less influential than Glotz, argued that these debates reflected a complex Greek attitude during the era of the developed polis toward those rules that were once encapsulated by the term *themistes*.

<sup>14</sup> Glotz 1904: 239: “(...) l’idée de moralité est absente de ce mot δίκη” (“...the idea of morality is absent from the term δίκη”). See also Glotz (1928 = 1996), particularly Chapter 1, which addresses the transition from “family economy” to the “economy of the polis.” (Both publications are freely accessible on the website <https://gallica.bnf.fr/> [08.12.2024]).

<sup>15</sup> This interpretation was popularised and further developed by another highly influential scholar of archaic socio-legal realities, Louis Gernet (1917: 7–8, 459–462; *cf.* Bourriot 1976: 85, 132–133). Gernet advanced Glotz’s model by portraying *themis* as a form of kinship-based justice (*la justice familiale*), rooted in the decisions of the head of the household. In his analysis, *themis* in Homeric society not only regulates intrafamilial relations but also partially extends to inter-clan dynamics and communal order. At the same time, *dike* begins to take shape as a distinct concept. While it does not yet function as a “factor of [social] harmony or organisation” (1917: 7), Gernet argues that *dike* would later become a critical expression of the polis’s practices of inter-clan arbitration (1917: 459). In subsequent works, Gernet linked the idea of “kinship-based law” with the broader concept of “pre-law” (*pré-droit*), a theme explored in greater depth in the following subsection (1981: 281–282).

<sup>16</sup> An example can be found in Sophocles’ *Antigone*, where, according to traditional interpretations, the identity of the “family member” and obedience to unwritten rules (*ágrapta nómina*) are set in opposition to *nómoi*, that is, the institutionally established laws of the *polis*. An overview of interpretations of *Antigone* is presented by Zartaloudis 2019: 287–313. See also Papadodima 2010: 12–20, for a discussion of *dike* (or rather *Dike*) as a force juxtaposed by Sophocles with “written laws” and decrees established by humans (“human decrees”).



### Beyond progressivist approaches

Glötz's assumptions had a profound impact on research across various fields, including literary studies, the history of philosophy and law, as well as linguistics. This influence is clearly evident in numerous publications, including the works of renowned scholars such as Louis Gernet (1917: 22–24, 459–462), Émile Benveniste (2016 [1969<sup>1</sup>]: 391–394), Jacqueline de Romilly (1971: 9–14), and Arnaldo Biscardi (1982: 351–360). These works commonly assert that the concept of *themis* in Greek normative thought represented divine and eternal rules, whereas *dike* and its derivatives “sanctioned laws established by humans.”<sup>17</sup>

While this interpretative model achieved significant success in the 20<sup>th</sup> century, it also raises numerous methodological questions and concerns. The main criticism of this framework is its anachronistic perspective, heavily reliant on later sources, especially narratives and discourses about “justice” originating in classical Athens. The *themis*–*dike* model is, in this sense, dependent on categories, concepts, and antinomies alien to the archaic period, such as *nomos*–*physis*,<sup>18</sup> written versus unwritten laws, or “civic obligations” versus “family solidarity.”<sup>19</sup> As Rosalind Thomas observes (2005: 53, 59; also 1994: 124–127 and 1996), the questions posed in 5<sup>th</sup>- and 4<sup>th</sup>-century BCE literary works or political speeches about the status and role of “eternal norms/laws” do not reflect the actual operation of socio-legal rules in archaic Greece.<sup>20</sup> Instead, they express concerns specific to the classical period, such as anxieties about the development of legislative practices or fears of the legal system's instrumental manipulation by political leaders. In this respect, the evolutionary model of Greek justice proposed by Glötz and his followers not only distorts the perception of the archaic era but also unjustifiably oversimplifies many classical texts.

<sup>17</sup> Cf. Rybowska 2017: 75–76 for similar observations regarding the relationship between *dike* (adj. *dikaïos*) – a normative category allegedly belonging to the domain of human institutions (“the law established by humans”) – and the adjective *hosios*, which the scholar associates with “the divine law” (“Przymiotnik *hosios* jak i *dikaïos*, jeśli nawet odnosiły się do podobnych zjawisk, to pierwszy z nich oznaczał to, co określano jako boskie prawo, podczas gdy *dikaïos* to, co sankcjonowało prawo ustanawiane przez ludzi”). The tension between kinship-based order and polis-based law is a recurring theme in the writings of many historians of this period, as noted by Roussel (1976: 17–22, 99–103), who also provides a more extensive bibliography on the subject.

<sup>18</sup> On the opposition between *nomos* and *physis* in classical texts, see Balot 2006: 98–105, and Rybowska 2017: 108–137. It is worth emphasising, as Ostwald observes (1965 = 2009: 114–115; cf. Zartaloudis 2019: xxxvi–xxxvii, 63, 188, 210–211), that for the archaic period, the division between the realm of norms/duties and the causally determined laws of nature is entirely anachronistic.

<sup>19</sup> Cf. Seaford 2003: 13, who notes that the tension between *civic duty* and *family solidarity*, so characteristic of classical tragedy, is absent in Homeric epics.

<sup>20</sup> Similar observations can be found in Youni 2006: 18–19. See also Allen (2005: 387–388) and Ostwald (1973a = 2009: 125–155), who demonstrates that various classical authors use the concept of *agrapha* in different ways, assigning it diverse meanings.

As emphasised by Felix Bourriot (1976: 252) and David Bouvier (2002: 235–245, 248–252), there is not a single verse in the epic tradition that unequivocally supports Glotz’s interpretation. While some rules depicted in Homer, particularly in the *Odyssey*, may suggest a “familial” or “kin-based” order (cf. Bourriot 1976: 240–259), the heroes of both epics are defined not only by their kinship ties but also by their affiliation with the *polis*. In this regard, any attempts to use the categories of *themis* and *dike* to justify evolutionary models<sup>21</sup> – portraying old, unwritten laws (identified with *themistes*) as opposing the *polis* order and its “civic” values, represented by the term *dike* – must be considered unfounded.<sup>22</sup>

How, then, can we understand the relationship between these concepts? Contrary to the assumptions of Glotz and his followers, *themistes* did not constitute a coherent, fixed, and transparent set of social norms characteristic of the archaic era (cf. Elmer 2013: 84–87). The use of this concept in the epics, especially in the *Iliad*, seems to affirm the fluidity and instability of norms. This, in turn, supports the arguments of scholars who focus on the performativity of discourses and normative orders. As Jacques Derrida (1988: 1–23, 29–110) and Judith Butler (1990) have argued, the boundary between constative speech (statements describing existing facts) and performative speech (acts that create entirely new rules) is always fluid. New norms never emerge ex nihilo, and the durability of an order regarded as “traditional” or “eternal” within a given society inherently relies on its continual “re-enactment” (performance) and repetition. From this perspective, we can never be certain whether Homeric heroes invoke a particular *themis* because they believe in its objective and eternal nature, or whether they use the concept to impose their own will on others.

Abandoning the outdated evolutionary models and terminological assumptions derived from Glotz’s work allows us to reinterpret *themis* as a dynamic tool for shaping cultural norms and mechanisms of power. This shift also illuminates the complementary relationship between *themis* and *dike*.<sup>23</sup> While traditionally viewed

<sup>21</sup> Hartvig Frisch (1949: 49) had already warned against this: “It is hardly too rash to deduce from this material that in Homer Themis suggests the older and more venerable idea, while Dike, in Homeric Times, implied a relatively new, accurate, juridic idea, which, so far, had created around itself no halo of divinity or of higher righteousness”.

<sup>22</sup> It is also important to emphasise the arbitrariness of the assumption that the development of the *polis* was preceded by a period dominated by powerful clans or the autonomy of the *oikos* as the primary socio-economic unit. As Jan Paul Crielaard (2020: 238–244) observes, archaeological evidence appears to suggest a closer relationship between the development of the *polis* and the *oikos* during the so-called “Dark Ages”: “(...) in the same period when the community becomes more important, its members seem to have felt a need to clearly define their houses, households, and sustenance” (p. 244). On the inadequacy of viewing so-called “primitive” societies in terms of disconnected *oikoi* (cf. Finley 1979: 57–63, 74–88), domestic households, lacking broader social structures and incapable of forming complex communal relationships, see Graeber and Wengrow 2021, esp. Chapter 5, 6, and 11.

<sup>23</sup> Cf. Hesiod, *Op.* 9–10: δίκη δ’ ἴθυνη θέμιστας | τὴνη... (with a commentary of Rousseau 1996, paragraph 9, cf. Janik 2003: 102–103). See also Ostwald 1973b: 674, who draws particular attention to the complementarity of *themis* and *dike*; furthermore: Frisch 1949: 47–94; Biscardi 1982: 354–356; Yamagata 1994: 17–20; Bouvier 2002: 252–253, 267; Pelloso 2012: 139–152 and 2013: 231.

as opposites, *dike* – already in the *Iliad* – emerges as a term denoting a “verdict” or “decision.” It signifies a consensual act primarily aimed at resolving personal disputes, contrasting with the divine and universal character often attributed to *themistes*. Nevertheless,<sup>24</sup> it is important to reiterate (see paragraph 1) that within archaic epic traditions, *themistes* are primarily depicted as eternal, divine principles governing human interaction. Discourses invoking this concept legitimise the creation and internalisation of norms through divine figures, differing fundamentally from the human-centred procedures of conflict resolution on the agora, which generate *dike*. By discarding the entrenched scholarly biases regarding the relationship between *themis* and *dike*, we open new avenues for exploring these concepts. This fresh perspective invites deeper inquiry into how these notions functioned within the cultural and normative frameworks of archaic and classical Greece.

## Bibliography

### Primary sources and translations

- Hesiod. (1983). *Theogonia, Opera et Dies, Scutum. Fragmenta selecta*. F. Solmsen, R. Merkelbach, M.L. West (eds.). Oxford: Clarendon Press.
- Homer. (1920). *Opera*. D.B. Monro, T.W. Allen (eds.). Vol. I–V. Oxford: Oxford University Press.
- Homer. (1967). *The Iliad of Homer*. Translated with an introduction by R. Lattimore. Chicago–London: University of Chicago Press / Phoenix Books.
- Homer. (1996). *The Odyssey*. Translated by E. Vieu, with an introduction and notes by B. Knox. New York: Viking.

### Secondary literature

- Allan, W. (2006). Divine Justice and Cosmic Order in Early Greek Epic. *The Journal of Hellenic Studies* 126. 1–35. <https://doi.org/10.1017/S0075426900007631>
- Allan, W., Cairns, D. (2011). *Conflict and Community in the Iliad*. In: N. Fisher, H. van Wees (eds.), *Competition in the Ancient World*. Swansea: Classical Press of Wales. 113–146.
- Allen, D.S. (2005). *Greek Tragedy and Law*. In: M. Gagarin, D. Cohen (eds.), *The Cambridge Companion to Ancient Greek Law*. Cambridge: Cambridge University Press. 374–393.
- Balot, R.K. (2006). *Greek Political Thought*. Malden, MA: Wiley-Blackwell.
- Barker, E.T.E. (2009). *Entering the Agon: Dissent and Authority in Homer, Historiography and Tragedy*. Oxford: Oxford University Press.
- Benveniste, É. (1966). *Dictionary of Indo-European Concepts and Society*. Trans. E. Palmer. Chicago: HAU Books (= *Le vocabulaire des institutions indo-européennes*, Paris: Les Editions de Minuit, 1969).
- Biscardi, A. (1982). *Diritto greco antico*. Milano: Giuffrè.
- Bourriot, F. (1976). *Recherches sur la nature du Genos: étude d'histoire sociale athénienne, périodes archaïque et classique*. Lille: Université de Lille.

<sup>24</sup> Cf. Janik 2003: 115: “Both of them [sc. *dike* and *themis*] express a norm in a very broad sense, their meaning, however, is slightly different in every work analysed in this survey”.

- Bouvier, D. (2002). *Le sceptre et la lyre. L'Iliade ou les héros de la mémoire*. Grenoble: Éditions Jérôme Millon.
- Butler, J. (1990). *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge.
- Bravo, B. (1988). *Polis u Homera*. W: B. Bravo, J. Kolendo, W. Lengauer (red.). *Świat Antyczny. Stosunki społeczne, ideologia i polityka, religia. Studia ofiarowane Izie Biezuńskiej-Małowist w pięćdziesięciolecie pracy naukowej przez Jej uczniów*. Warszawa: Państwowe Wydawnictwo Naukowe. 17–65.
- Cantarella, E. (1979). *Norma e sanzione in Omero: contributo alla protostoria del diritto greco*. Milano: A. Guiffre Editore.
- Castoriadis, K. (1986). *I archaia elliniki dimokratia kai i simasia tis gia mas simera*. Athina: Ypsilon.
- Crielaard, J.P. (2020). *Homeric Communities*. In: C.O. Pache (ed.). *The Cambridge Guide to Homer*. Cambridge: Cambridge University Press. 227–244.
- Derrida, J. (1988). *Limited Inc*. Trans. S. Weber. Evanston, Illinois: Northwestern University Press.
- Dova S. (2020). *The Poetics of Failure in Ancient Greece*. New York: Routledge.
- Duploux, A. (2006). *Le Prestige Des Elites: Recherches Sur Les Modes de Reconnaissance Sociale en Grece Entre Les Xe Et Ve Siecles Avant J.-C.*. Paris: Les Belles Lettres.
- Edwards, M.W. (1991). *The Iliad: A Commentary. Vol. V (Books 17–20)*. Cambridge: Cambridge University Press.
- Elmer, D.F. (2013). *The Poetics of Consent: Collective Decision Making and the Iliad*. Baltimore, MD: Johns Hopkins University Press.
- Finkelberg, M. (2003). *Homer as a Foundation Text*. In: M. Finkelberg, G. Stroumsa (eds.). *Homer, the Bible and Beyond: Literary and Religious Canons in the Ancient World*. Leiden: Brill. 75–96.
- Finkelberg, M. (2020). *Homer and Early Greek Epic: Collected Essays*. Berlin–Boston: De Gruyter.
- Finley, M. (1979). *The World of Odysseus*. Harmondsworth: Penguin Books.
- Frisch, H. (1949). *Might and Right in Antiquity. I: From Homer to the Persian Wars*. Transl. C.C. Martindale. Copenhagen: Gyldendal Boghandel.
- Gagarin, M. (2005a). *The Unity of Greek Law*. In: M. Gagarin, D. Cohen (eds.). *The Cambridge Companion to Ancient Greek Law*. Cambridge: Cambridge University Press. 29–40.
- Gagarin, M. (2005b). *Early Greek Law*. In: M. Gagarin, D. Cohen (eds.). *The Cambridge Companion to Ancient Greek Law*. Cambridge: Cambridge University Press. 82–96.
- Gagarin, M. (2008). *Writing Greek Law*. Cambridge: Cambridge University Press.
- Gehrke, H.J. (2010). *Representations of the past in Greek culture*. In: L. Foxhall, H.J. Gehrke, N. Luraghi (eds.). *Intentional History: Spinning Time in Ancient Greece*. Stuttgart: Franz Steiner Verlag. 15–33.
- Gernet, L. (1917). *Recherches sur le développement de la pensée juridique et morale en Grèce*. Paris: Ernest Leroux.
- Gernet, L. (1981). *The Anthropology of Ancient Greece*. Trans. J. Hamilton, B. Nagy. Baltimore–London: Johns Hopkins University Press.
- Graeber, D., Wengrow, D. (2021). *The Dawn of Everything. A New History of Humanity*. London: Penguin/Allen Lane.
- Hirzel, R. (1907). *Themis, Dike und Verwandtes. Ein Beitrag zur Geschichte der Rechtsidee bei den Griechen*. Hildesheim: Georg Olms.
- Hölkeskamp, K.J. (1999). *Schiedsrichter, Gesetzgeber, und Gesetzgebung im archaischen Griechenland*. Stuttgart: Franz Steiner.
- Janik, J. (2003). *Terms of the Semantic Sphere of δίκη and θέμις in the Early Greek Epic*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Jeffery, L.H. (1976). *Archaic Greece: The City-states, C. 700–500 B.C*. London–Tonbridge: Benn.
- Karakantza, E.F. (2020). *Who Am I? (Mis)identity and the Polis in Oedipus Tyrannus*. Cambridge, Mass.–London: Center for Hellenic Studies.
- Latacz, J. (1985). *Homer. Der erste Dichter des Abendlandes*. München–Zürich: Artemis.

- Latte, K. (1946). Der Rechtsgedanke im archaischen Griechentum. *Antike und Abendland* 2/1. 63–76.
- Lesky, A. (1985). Grundzüge griechischen Rechtsdenkens. *Wiener Studien* 98. 5–40.
- Lloyd, G.E.R. (1979). *Magic, Reason and Experience: Studies in the Origins and Development*. Cambridge: Cambridge University Press.
- Lloyd-Jones, H. (1971). *The Justice of Zeus*. Berkeley–Los Angeles–London: University of California Press.
- Murray, O. (1993). *Early Greece*. London–Cambridge, Mass.: Harvard University Press.
- Ostwald, M. (1965). Pindar, *Nomos*, and Heracles (Pindar, frg. 169 [Snell<sup>3</sup>] and POxy. No. 2450, frg. 1). *Harvard Studies in Classical Philology* 69. 109–138. <https://doi.org/10.2307/310779>
- Ostwald, M. (1973a). Was There a Concept *Agraphos Nomos* in Classical Greece? In: E.N. Lee, A.P. Mourelatos, R. Rorty (eds.). *Exegesis and Argument, Studies in Greek Philosophy Presented to Gregory Vlastos*. Assen: Van Gorcum. 70–104.
- Ostwald, M. (1973b). *Ancient Greek Ideas of Law*. In: P.G. Wiener (ed.). *Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas*. Vol. 2. New York: Charles Scribner's Sons. 673–685.
- Ostwald, M. (2009). *Language and History in Ancient Greek Culture*. Philadelphia: University of Pennsylvania Press, Inc.
- Palaima, T.G. (2000). Θέμις in the Mycenaean Lexicon and the Etymology of the Place-Name \**ti-mi-to a-ko*. *Faventia* 22/1. 7–19
- Palmer, L.R. (1966). *Some Points for Discussion*. In: L.R. Palmer, J. Chadwick (eds.). *Proceedings of the Cambridge Colloquium on Mycenaean Studies*. Cambridge: Cambridge University Press. 275–284.
- Papadodima E. (2010). The Term *Dike* in Sophocles. *Classica et Mediaevalia* 61. 5–48.
- Papakonstantinou, Z. (2008). *Lawmaking and Adjudication in Archaic Greece*. London: Bristol Classical Press.
- Pelloso, C. (2012). *Themis e dike in Omero. Ai primordi del diritto dei Greci*. Alessandria: Edizioni dell'Orso.
- Raaflaub, K.A. (1997). Politics and Interstate Relations in the World of the Early Greek *Poleis*: Homer and Beyond. *Antichthon* 31. 1–27. <https://doi.org/10.1017/S0066477400002240>
- Raaflaub, K.A. (2013). *Archaic and Classical Greek Reflections on Politics and Government: from Description to Conceptualization, Analysis, and Theory*. In: H. Beck (ed.). *A Companion to Ancient Greek Government*. Malden–Oxford: Wiley–Blackwell. 73–92.
- Romilly de, J. (1971). *La loi dans la pensée grecque: des origines à Aristote*. Paris: Société D'Édition “les Belles Lettres”.
- Rousseau, P. (1996). *Instruire Persès. Notes sur l'ouverture des Travaux d'Hésiode*. In: F. Blaise, P. Judet de la Combe, P. Rousseau (eds.). *Le Métier du mythe: Lectures d'Hésiode*. Lille: Presses Universitaires du Septentrion. 93–167.
- Roussel, D. (1976). *Tribu et cité. Etudes sur les groupes sociaux dans les cités grecques aux époques archaïque et classique*. Paris: Les Belles Lettres.
- Rybowska, J. (2017). *Zbożność i bezbożność w kulturze Greków*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.
- Seaford, R. (2003) [1994<sup>1</sup>]. *Reciprocity and Ritual: Homer and Tragedy in the Developing City-State*. Oxford: Clarendon Press / Oxford University Press.
- Skarbak-Kazanecki, J. (2023). *Wokół pojęcia dikē: poetyka i ideologia „sprawiedliwości” w tradycji Teognisa z Megary* [“On the Concept of *Dikē*: Poetics and Ideology of “Justice” in the Tradition of Theognis of Megara”]. Unpublished PhD dissertation, University of Łódź. Available at: [https://www.bip.uni.lodz.pl/fileadmin/user\\_upload/rozprawa\\_doktorska\\_mgr\\_Jan\\_Skarbak-Kazanecki.pdf](https://www.bip.uni.lodz.pl/fileadmin/user_upload/rozprawa_doktorska_mgr_Jan_Skarbak-Kazanecki.pdf) [23.12.2024].
- Snodgrass, A.M. (1974). An Historical Homeric Society? *Journal of Hellenic Studies* 94. 114–125. <https://doi.org/10.2307/630424>
- Snodgrass, A.M. (1980). *Archaic Greece. The Age of Experiment*. London: J.M. Dent & Sons.

- Snodgrass, A.M. (2006). *Archaeology and the Emergence of Greece*. Ithaca: Cornell University Press.
- Stein-Hölkeskamp, E. (1989). *Adelskultur und Polisgesellschaft. Studien zum griechischen Adel in archaischer und klassischer Zeit*. Stuttgart: Franz Steiner.
- Thomas, R. (1994). *Law and the Lawgiver in the Athenian Democracy*. In: R. Osborne, S. Hornblower (eds.). *Ritual, Finance, Politics. Athenian Democratic Accounts Presented to David Lewis*. Oxford: Oxford Clarendon Press. 119–133.
- Thomas, R. (1996). *Written in Stone? Liberty, Equality, Orality, and the Codification of Law*. In: L. Foxhall, A.D.E. Lewis (eds.). *Greek Law in Its Political Setting: Justifications Not Justice*. Oxford: Oxford University Press. 9–31.
- Thomas, R. (2005). *Writing, Law, and Written Law*. In: M. Gagarin, D. Cohen (eds.). *The Cambridge Companion to Ancient Greek Law*. Cambridge: Cambridge University Press. 41–60.
- Tor, S. (2017). *Mortal and Divine in Early Greek Epistemology. A Study of Hesiod, Xenophanes and Parmenides*. Cambridge: Cambridge University Press.
- Ulf, Ch. (1990). *Die homerische Gesellschaft: Materialien zur analytischen Beschreibung und historischen Lokalisierung*. München: C.H.Beck.
- Van Wees, H. (1992). *Status Warriors: War, Violence and Society in Homer and History*. Amsterdam: J.C. Gieben.
- Węcowski, M. (2011). *On the Historicity of the “Homeric World”: Some Methodological Considerations*. In: A. Mazarakis-Ainian (ed.). *The “Dark Ages” Revisited: Acts of an International Symposium in Memory of William D. E. Coulson (University of Thessaly, Volos, 14–17 June 2007)*. Volos: University of Thessaly Press. 73–81.
- Wolff, H.J. (1946). The Origin of Judicial Litigation among the Greeks. *Traditio* 4. 31–87.
- Wolff, H.J. (1971). *Juristische Graezistik – Aufgaben, Probleme, Möglichkeiten*. In: H.J. Wolff, J. Modrzejewski, D. Nörr (eds.). *Symposion 1971. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Köln–Wien: Verlag der Österreichischen Akademie der Wissenschaften. 1–22.
- Wolff, H.J. (1980). *Vorgeschichte und Entstehung des Rechtsbegriffs in frühen Griechentum*. In: W. Fikentscher, H. Franke, O. Kohler (eds.). *Entstehung und Wandel rechtlicher Traditionen*. Freiburg–München: Alber. 557–579.
- Wolff, H.J. (1982). *Preistoria ed origine del concetto di diritto nell’esperienza greca arcaica*. In: *Studi in onore di Cesare Sanfilippo*. Vol. 2. Milano: Giuffrè. 757–780.
- Yamagata, N. (1994). *Homeric Morality*. Leiden–New York–Köln: Brill.
- Youni, M.S. (2006). *Nomos poleos. Dikaiosyni kai nomothesia stin archaia elliniki polin: Oi archaikoi chronoi*. Thessaloniki: Vantias.
- Zartaloudis, Th. (2019). *The Birth of Nomos*. Edinburgh: Edinburgh University Press.

**Dr Jan Skarbek-Kazanecki** – Assistant Professor at the Department of Classical Philology, University of Lodz. His interests include archaic Greek poetry and music, especially the elegiac tradition, ancient Greek philosophy and the anti-democratic discourse of the classical period.

e-mail: jan.skarbek-kazanecki@uni.lodz.pl