

Living with the rules: agency, coercion and gender in Herodotus' *Histories*

24th Annual Forum of Young Legal Historians

15th June 2018, Warsaw

1. Demaratus to Xerxes

"They [the Spartans] are free, yet not wholly free: **law is their master**, whom they fear much more than your men fear you. Each man does what the law commands, and its command never changes, which is that they should not flee from battle, no matter how many men are ranged against them, but stay in line and either win or die.

ἐλεύθεροι γάρ ἐόντες οὐ πάντα ἐλεύθεροι εἰσί: ἔπεστι γάρ σφι δεσπότης νόμος, τὸν ὑποδειμαίνουσι πολλῷ ἔτι μᾶλλον ἢ οἱ σοὶ σέ. ποιεῦσι γῶν τὰ ἀν ἐκεῖνος ἀνώγῃ: ἀνώγει δὲ τῶντὸ αἰεί, οὐκ ἐῶν φεύγειν οὐδὲν πλῆθος ἀνθρώπων ἐκ μάχης, ἀλλὰ μένοντας ἐν τῇ τάξι ἐπικρατέειν ἢ ἀπόλλυσθαι, 7.104-5.

2. Law/nomos

- *Nόμος*, ó - usage, custom, law, statute (*Greek- English Lexicon, Liddell and Scott*)
- 'a traditional attitude which implies certain deep-seated convictions and beliefs...something generally accepted as valid and therefore binding'. Ostwald, 2009: 115,118.
- 'accepted and established rules of conduct handed down from the past'. Humphries, 1987: 217.
- '[Greek]law is perhaps best studied not as a source of juridical principles but rather as a way of understanding how particular ancient societies perceived and regulated themselves'. Todd, *Oxford Classical Dictionary* (OCD), 2012: 811.
- On Athenian law and procedure: 'an unwritten rule should be regarded as a law if the community or the ruler approves it and imposes or authorises punishments for infringement of it'. MacDowell, *Oxford Classical Dictionary* (OCD), 2012: 802.
- 'The law is gendered and at the same time engenders society: on the one hand it reflects the social construction of sexual roles, on the other it reinforces this construction'. Cantarella, 2005:237.
- 'the law as a narrative mode creates and differentiates disputants'. Johnstone, 1998: 224.

3. The ideology of female inferiority

- Artemisia, on the eve of the battle of Salamis, advises Xerxes, king of the Persians: 'Do not commit the fleet to a battle, because at sea your men will be as far inferior to

the Greeks as women are to men' (φείδεο τῶν νεῶν μηδὲ ναυμαχήην ποιέο. οἱ γὰρ ἄνδρες τῶν σῶν ἀνδρῶν κρέσσονες τοσοῦτο εἰσὶ κατὰ θάλασσαν ὅσον ἄνδρες γυναικῶν, 8.68).

- Xerxes, after the Persian defeat at Salamis: 'my men have become women, my women men' (οἱ μὲν ἄνδρες γεγόνασί μοι γυναικες, αἱ δὲ γυναικες ἄνδρες, 8.88).
- At the battle of Plataea, as the Persians attacked the Greeks, inflicting great losses, they called them women (προσβάλλοντες δὲ κακὰ μεγάλα ἐργάζοντο καὶ γυναικας σφέας ἀπεκάλεον, 9.20).

4. Herodotus on *nomos*

'If one were to order all mankind to choose the best set of rules in the world, each group would, after due consideration, chooses its own laws; each group regards its own as being by far the best...I think Pindar was right to have said in his poem that *nomos* is king of all'.

εἰ γάρ τις προθείη πᾶσι ἀνθρώποισι ἐκλέξασθαι κελεύων νόμους τοὺς καλλίστους ἐκ τῶν πάντων νόμων, διασκεψάμενοι ἀν ἔλοίατο ἔκαστοι τοὺς ἑωυτῶν:...ὅρθῶς μοι δοκέει Πίνδαρος ποιῆσαι νόμον πάντων βασιλέα φήσας εἶναι, 3.38.

5. Some thoughts on modern law

- 'The so-called gap between the law on the books and the law in action might actually operate to define and sustain the law as a durable and powerful social institution'. Sibley and Ewick, 2000: 55.
- 'Most workers want nothing more of the law than that it should leave them alone'. Opening sentence of *The Worker and the Law*, K.W. Wedderburn, 1965. Penguin Books.
- 'Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things. The law school model of personal legal problems, of solving them and returning the client to the smooth and orderly world in television advertisements, doesn't apply to poor people'. S.Wexler, 1969-70, 79 *Yale L.J.* 1049.

Case study 1

When Aristodemus returned to Sparta, he was disgraced and without honour. He was deprived of his honour in this way: no Spartan would give him fire or speak with him, and they taunted him by calling him Aristodemus the Trembler. In the battle at Plataea, however, he made up for all the blame brought against him.

ἀπονοστήσας δὲ ἐς Λακεδαιμονα ὁ Ἀριστόδημος εἶχε ὄνειδός τε καὶ ἀτιμίην: πάσχων δὲ τοιάδε ἡτίμωτο: οὕτε οἱ πῦρ οὐδεὶς ἔνωνε Σπαρτιητέων οὕτε διελέγετο. ὄνειδος δὲ εἶχε ὁ τρέσας Ἀριστόδημος καλεόμενος. ἀλλ' ὁ μὲν ἐν τῇ ἐν Πλαταιῇσι μάχῃ ἀνέλαβε πᾶσαν τὴν ἐπενειχθεῖσαν αἰτίην, 7.231.

Case study 2

Argeia and the twins

The Spartans at that time decreed, **according to law**, that the kingdom should pass to the elder of the two boys. However, they did not know which one to choose, because they were identical twins and they could not tell them apart. Since they were unable to decide, they questioned the boys' mother. She claimed that she too did not know which was elder and which was younger, though in fact she knew perfectly well, but she wanted to find a way for both of them to become kings.

Λακεδαιμονίους δὲ τοὺς τότε ἔόντας βουλεῦσαι **κατὰ νόμον** βασιλέα τῶν παίδων τὸν πρεσβύτερον ποιήσασθαι. οὗκων δή σφεας ἔχειν ὄκοτερον ἔλωνται ὥστε καὶ ὄμοιών καὶ ἴσων ἔόντων: οὐ δυναμένους δὲ γνῶναι...ἐπειρωτᾶν τὴν τεκοῦσαν. [4] τὴν δὲ οὐδὲ αὐτὴν φάναι διαγινώσκειν. εἰδυῖαν μὲν καὶ τὸ κάρτα λέγειν ταῦτα, βουλομένην δὲ εἴ κως ἀμφότεροι γενούατο βασιλέες, 6.52.3-4.

Case study 3

At this point the Ephors and the elders had a debate and then put this proposal to Anaxandridas. ‘We can see that you are reluctant to let go of your present wife; do this then and don’t refuse, or the Spartiates might come to an unpleasant resolution in your case. We’re not going to ask you to dismiss your existing wife, but you must bring in another wife, who can bear children, and you must treat them both the same. Anaxandridas agreed with their proposal, and from then on had two wives and two households, **which was no part of Spartiate practice**.

πρὸς ταῦτα οἱ ἔφοροι καὶ οἱ γέροντες βουλευσάμενοι προσέφερον Ἀναξανδρίδη τάδε. ‘ἐπεὶ τοίνυν τοι περιεχόμενόν σε ὄρῳμεν τῆς ἔχεις γυναικός, σὺ δὲ ταῦτα ποίεε, καὶ μὴ ἀντίβανε τούτοισι, ἵνα μή τι ἀλλοῖον περὶ σεῦ Σπαρτιῆται βουλεύσωνται: γυναικὸς μὲν τῆς ἔχεις οὐ προσδεόμεθά σεν τῆς ἐξέσιος, σὺ δὲ ταύτη τε πάντα ὅσα νῦν παρέχεις πάρεχε καὶ ἄλλην πρὸς ταύτη ἐσάγαγε γυναικα τεκνοποιόν.’ ταῦτά κη λεγόντων συνεχώρησε ὁ Ἀναξανδρίδης, μετὰ δὲ γυναικας ἔχων δύο διξάς ιστίας οἴκεε, **ποιέων οὐδαμῶς Σπαρτιητικά**, 5.40.1-2.

Case study 4

The Athenians did not bring wives with them on their voyage of colonization, but murdered some Carians and took their daughters to be their wives. It is because of this massacre that the women **made it a law** (a law they bound themselves to by oaths and passed on from mother to daughter) never to share a meal with their husbands and

never to call out to them by name - these were, after all, the men who had gained them as their wives by murdering their fathers, husbands and children.

οὗτοι δὲ οὐ γυναῖκας ἡγάγοντο ἐξ τὴν ἀποικίην ἀλλὰ Καείρας ἔσχον, τῶν ἐφόνευσαν τοὺς γονέας. διὰ τοῦτὸν δὲ τὸν φόνον αἱ γυναῖκες αὗται **νόμον θέμεναι** σφίσι αὐτῆσι ὄρκους ἐπήλασαν καὶ παρέδοσαν τῇσι θυγατράσι, μή κοτε ὁμοσιτῆσαι τοῖσι ἀνδράσι μηδὲ οὐνόματι βῶσαι τὸν ἑωυτῆς ἄνδρα, τοῦδε εἴνεκα ὅτι ἐφόνευσαν σφέων τοὺς πατέρας καὶ ἄνδρας καὶ παῖδας καὶ ἐπειτα ταῦτα ποιήσαντες αὐτῆσι συνοίκεον, 1.146.2-3.

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